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STATE OF MAINE

ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE

COMMITTEE ON NATURAL RESOURCES

Susan Lessard, Chair  
Board of Environmental Protection  
17 State House Station  
Augusta, ME 04333

May 1, 2009

RE: Government Evaluation Act Review

Dear Ms. Lessard:


The Joint Standing Committee on Natural Resources is writing to inform you of its decision to review the Board of Environmental Protection pursuant to the Government Evaluation Act, Title 3 of the Maine Revised Statutes, chapter 35. The objective of the law is to provide for the periodic review of the departments and independent agencies of State Government in order to evaluate their efficiency and performance in carrying out their legislative mandate.

As required by 3 MRSA § 955, the Board must submit a program evaluation report to the Natural Resources Committee by **November 1, 2009**. The report then forms the basis for the committee's review and issuance of its findings and recommendations during the Second Regular Session. The information required to be provided in the agency program evaluation report is specified in statute at 3 MRSA § 956. The committee will conduct its review of the Board during the Second Regular Session. If you have any questions regarding the government evaluation review process, please contact our legislative analyst, Susan Johannesman, at the Office of Policy and Legal Analysis.

The committee looks forward to working with you on this review. Thank you for your attention to this matter.

Sincerely,

  
Senator Seth Goodall  
Senate Chair

  
Representative Bob Duchesne  
House Chair

cc: Members, Joint Standing Committee on Natural Resources  
Terry Hanson, Board of Environmental Protection  
Susan Johannesman, OPLA

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STATE OF MAINE  
BOARD OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI  
GOVERNOR

November 1, 2009

SUSAN M. LESSARD  
CHAIR  
CYNTHIA S. BERTOCCI  
EXECUTIVE ANALYST  
TERRY A. HANSON  
ADMINISTRATIVE ASSISTANT

Senator Seth A. Goodall  
Representative Robert S. Duchesne  
Members of the Joint Standing Committee on Natural Resources  
#13 State House Station  
Augusta, Maine 04333-0013

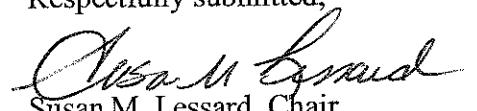
Dear Senator Goodall, Representative Duchesne, Committee Members:

In accordance with the Government Evaluation Act, Title 3, chapter 35 of the Maine Revised Statutes, the Board of Environmental Protection submits the attached self assessment report for the period 2000 to 2009.

The Board has a long history of providing for meaningful public participation in major decisions of the Department of Environmental Protection including the adoption of rules, the evaluation of major license applications, the review of Commissioner licensing decisions on appeal, and the review of certain enforcement actions. Board members come from across the state and have varying professional backgrounds. As such members bring a diverse range of experiences (as scientist, lawyer, town manager, engineer, teacher, business executive, town code enforcement officer, foundation director) to each matter considered by the Board, with the questioning and analysis of each member informing the decision-making of the Board as a whole. Board members appreciate that they have a duty to implement the law and policies established by the Legislature and approach each matter before the Board with an open mind, basing their decisions on the evidence and the law. Board members consider it a privilege to serve the people of Maine on the Board of Environmental Protection, and we are committed to carrying out our statutory responsibilities in a fair, transparent and legally appropriate way.

I look forward to the opportunity to discuss this report with the Committee at your convenience. If you have any questions or require additional information, please contact Cynthia Bertocci, the Board's Executive Analyst, at 287-2452 or [cynthia.s.bertocci@maine.gov](mailto:cynthia.s.bertocci@maine.gov).

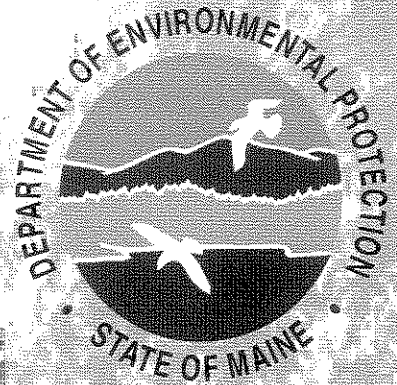
Respectfully submitted,

  
Susan M. Lessard, Chair  
Board of Environmental Protection

cc: David P. Littell, DEP Commissioner  
Jody Breton, DEP Deputy Commissioner



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# **Board of Environmental Protection Government Evaluation Act Self Assessment 2009**

**Maine Board of Environmental Protection**

**17 State House Station  
Augusta, Maine 04333-0017**

**November 2009**

**Contact: Cynthia S. Bertocci, Executive Analyst 287-2452**

**REPORT TO THE JOINT STANDING COMMITTEE ON NATURAL RESOURCES  
GOVERNMENT EVALUATION ACT SELF-ASSESSMENT 2009**

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# MAINE BOARD OF ENVIRONMENTAL PROTECTION

## GOVERNMENT EVALUATION ACT SELF-ASSESSMENT 2009

### I. Introduction

#### A. Enabling Law

Title 38 M.R.S. § 341-A(2) establishes the Department of Environmental Protection consisting of the Board of Environmental Protection and the Commissioner of Environmental Protection. The purpose of the Board is “to provide informed, independent and timely decisions on the interpretation, administration and enforcement of the laws relating to environmental protection and to provide for credible, fair and responsible public participation in department decisions. The board shall fulfill its purpose through rulemaking, decisions on selected permit applications, review of the commissioner’s licensing and enforcement actions and recommending changes in the law to the Legislature.” (38 M.R.S. § 341-B)

#### B. Organizational Structure

The Board of Environmental Protection (Board) consists of ten citizen members appointed by the Governor and approved by the Legislature (38 M.R.S. § 341-C). Board members are chosen to represent a broad range of interests and experience which can be brought to bear on the matters before the Board for decision. Four members must be from the First Congressional District and four members from the Second Congressional District. Members are appointed for staggered four year terms, and no member may serve more than two consecutive four year terms. One member of the Board is appointed by the Governor as Chair. Board members volunteer their time, receiving \$55.00 per day plus expenses for their attendance at Board meetings and hearings (5 M.R.S. § 12004-D(2)). (See Appendix A for biographical information on the current Board members.)

The Board generally meets on the first and third Thursday of each month; however, the schedule may change depending upon the workload. Adjudicatory hearings which require more than a day are scheduled outside regular meeting days. Six members of the Board constitute a quorum for a vote of the Board, six members constitute a quorum for rulemaking hearings, and three members constitute a quorum for adjudicatory hearings (38 M.R.S. § 341-E).

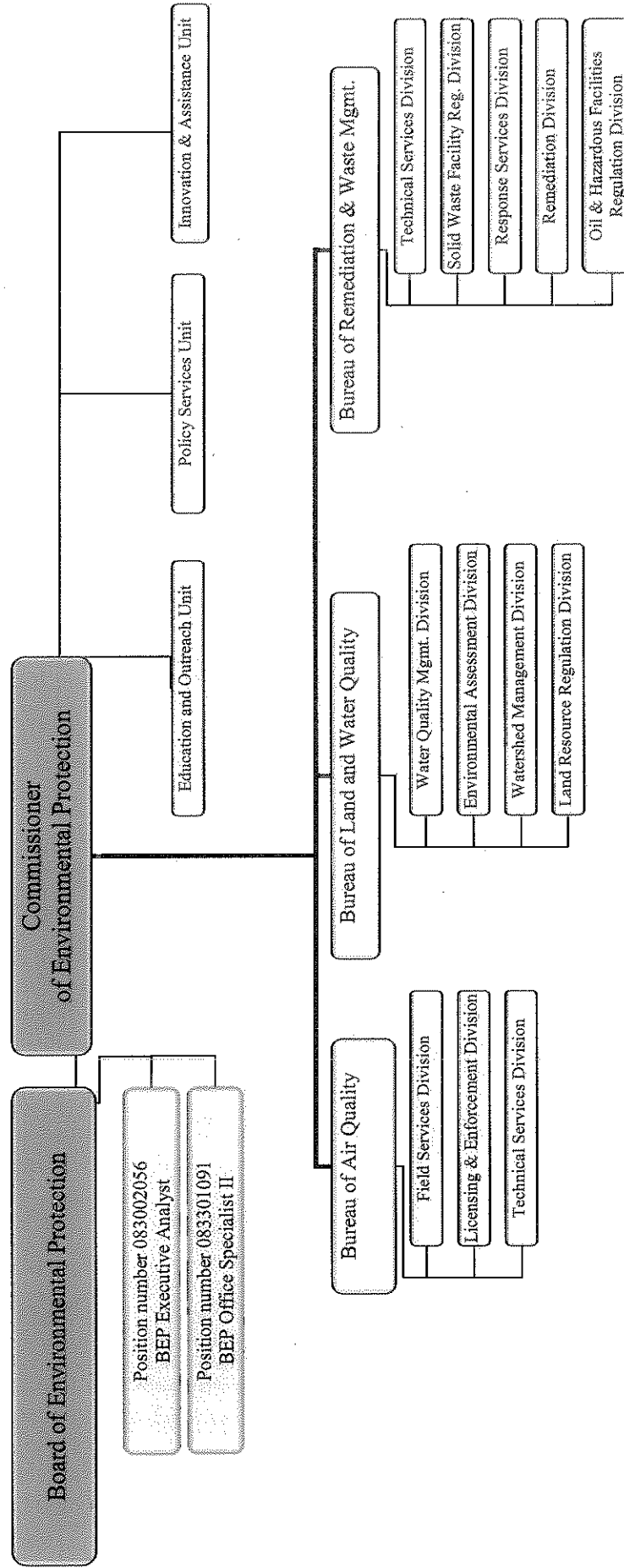
The Board is staffed by a full-time Executive Analyst who is hired by, and serves at the pleasure of, the Board (38 M.R.S. § 341-F)<sup>1</sup>. The Commissioner’s staff provides administrative and technical support to the Board and makes recommendations to the Board on pending matters (38 M.R.S. § 342). An Office Specialist II in the Office of the Commissioner serves as the clerk for the Board. The Board may also retain the services of consultants as necessary to carry out its responsibilities (38 M.R.S. § 341-F(5)). (See Figure 1 Organizational Chart.)

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<sup>1</sup> The position of Executive Analyst was established by PL 1999, c. 784 “An Act to Implement the Recommendations of the Task Force to Study the Operation of and Support for the Board of Environmental Protection.”

**Figure 1: Maine Department of Environmental Protection**

**Organizational Chart – Overview of Agency Structure**



Title 38 M.R.S. § 341-A(2) establishes the Department of Environmental Protection consisting of the Board of Environmental Protection and the Commissioner of Environmental Protection.

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GOVERNMENT EVALUATION ACT SELF-ASSESSMENT 2009

**C. Purpose**

The Board is directed “to provide informed, independent and timely decisions on the interpretation, administration and enforcement of the laws relating to environmental protection and to provide for credible, fair and responsible public participation in department decisions” (38 M.R.S. § 341-B).

In creating the Board, the Legislature chose to provide a public forum in which the regulated community, applicants, and interested persons come before a group of fellow citizens to provide evidence and argue the merits of a proposed rule, application, or other environmental matter determined by the Legislature to be of significant public interest. Board members, who come from across the State and have varying professional backgrounds, are asked to take a fresh, unbiased look at the evidence and to evaluate each proposed rule, project, or enforcement matter against the relevant laws and render a decision.

While the Board is administratively located within the Department of Environmental Protection, the Board has decision-making authority independent of the Commissioner. Although an independent decision-maker, the Board must make its decisions based upon an analysis of the facts that are properly before it in the record and an application of the relevant legal criteria as set forth in statute and associated promulgated rules.

Proceedings before the Board are governed by the Maine Administrative Procedure Act, the Board’s procedural statutes and rules governing the various types of proceedings (e.g., rulemaking, appeal, etc.), and by program specific statutes and rules (e.g., air emissions, solid waste, wastewater discharge, etc.). In order to ensure that decisions are based upon information in the record that is available to all, the Board has adopted a policy on public participation.<sup>2</sup> The Board is also bound by the *ex parte* communications provisions of the Maine Administrative Procedure Act (5 M.R.S. § 9055). Members do not discuss pending matters with one another or with any interested persons outside of a Board meeting. All correspondence between parties or interested persons and the Board is channeled through the Executive Analyst and Administrative Assistant to ensure that all Board members, as well as parties to the proceeding, receive the same information in a legally appropriate way.

In addition to the limitations on communications, Board members are sensitive to any potential conflicts of interest, personal or professional, that may exist for a Board member on a particular matter. If there is any question of a potential conflict, the Board member consults with the Office of the Attorney General. If a conflict exists, the Board member will recuse himself from participation with an explanation to the parties at a Board meeting. If there is no conflict, but if there may nevertheless be an appearance of conflict, the Board member discloses the matter to the parties and interested public at a meeting to determine if there is any objection to the Board member’s participation.

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<sup>2</sup> Board Guidance on Receiving Public Comment, January 2, 1997.



## MAINE BOARD OF ENVIRONMENTAL PROTECTION GOVERNMENT EVALUATION ACT SELF-ASSESSMENT 2009

In keeping with its charge of providing for “credible, fair and responsible public participation in department decisions,” the Board conducts all of its meetings in a public forum that is publicly noticed and which any person may attend. The agenda for each Board meeting and a copy of all documentation provided to the Board is published on the Board’s web page approximately one week prior to the meeting.<sup>3</sup> The Board’s web page also contains information on Board procedures to assist members of the public in bringing their concerns to the Board. In cases where the Board is holding a licensing hearing, the Board conducts the hearing in the area of the proposed project to allow for the widest possible participation by interested persons potentially affected by the project. The Board also holds evening sessions so that interested persons who work during the daytime have an opportunity to address the Board on the matter at hand.

Over the past 10 years the Board has held an average of 31 meetings per year (regular meetings plus additional days for adjudicatory hearings). The average length of a meeting is 6.2 hours; the average number of members attending is 8. In addition to actual meeting time, members spend considerable time preparing for each meeting. Board members take their responsibilities seriously and are committed to conducting their work in a fair, transparent and legally appropriate way.

### II. Description of Each Program Administered by the Agency

The Board does not administer any independent programs. Rather, it has responsibility for certain functions within the Department of Environmental Protection which cut across a number of program areas. The Board’s duties and responsibilities are set forth in 38 M.R.S. §341-D. These duties and responsibilities include rulemaking; decisions on selected permit applications; review (appeals) of Commissioner licensing decisions; consideration of petitions to modify, revoke or suspend an existing license; review of certain enforcement actions; and recommendations to the Legislature for changes to laws administered by the Department of Environmental Protection. Each of these functions is discussed below. A summary of Board activity by year for each of these functions appears in Figure 2 (page 18). A summary of projects for which public hearings were held appears in Figure 3 (page 20). A list of the laws and rules administered by the Department appears in Appendix B.

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<sup>3</sup> Board of Environmental Protection website: <http://www.maine.gov/dep/bep/index.htm>.

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**A. Rulemaking:** The Board conducts public hearings on proposed agency rules and adopts agency rules.

**Goal:** Conduct agency rulemaking proceedings in accordance with the requirements of the Maine Administrative Procedure Act (Maine APA) and the program specific authorizing legislation, facilitate public review and input into agency rules, and adopt rules that effectively implement the intent of the Legislature.

**Background.** Subject to the Maine Administrative Procedure Act, “the board shall adopt, amend or repeal reasonable rules and emergency rules necessary for the interpretation, implementation and enforcement of any provision of law that the department [of Environmental Protection] is charged with administering. The board shall also adopt, amend and repeal rules as necessary for the conduct of its business.” (38 M.R.S. § 341-D(1-B))

Rules of the Department of Environmental Protection are most often initiated by the Commissioner in response to statutory directives. Amendments to rules may be initiated in response to a change in the authorizing state law, a change in the corresponding federal law if state consistency is required, or in response to new information indicating the need for clarification or modification of an existing rule. Department staff frequently holds meetings with stakeholders to obtain information regarding a matter prior to drafting a proposed rule or rule amendment. The draft rule is presented to the Board at a Board meeting. In most instances, the Board holds a public hearing on the proposed rule.<sup>4</sup> Following the hearing and close of the public comment period, the draft rule with any proposed changes made in response to public comment comes back to the Board for review and adoption. In accordance with 38 M.R.S. § 341-D(1-B),<sup>5</sup> the public is provided with a final opportunity for comment at the Board meeting when the rule is proposed for adoption or provisional adoption. Major substantive rules (5 M.R.S. § 8072) are provisionally adopted by the Board and presented to the Legislature for approval prior to final adoption.

The public may also petition for rulemaking in accordance with the Maine Administrative Procedure Act (5 M.R.S. § 8055), although such petitions are very rare.

**Priorities.** Priority for rulemaking is established by the Commissioner in response to legislative directives, changes in governing laws, and program needs. Proposed rules are published in the Department’s regulatory agenda in accordance with 5 M.R.S. § 8060. (See Appendix C for copy of the current regulatory agenda.)

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<sup>4</sup> In the case of minor amendments to an existing rule, the Board may, in accordance with the Maine APA, accept written public comment rather than hold a public hearing.

<sup>5</sup> The *Final Report of the Task Force to Study the Operation and Support for the Board of Environmental Protection, January 2000* prepared by the Legislature’s Office of Policy & Legal Analysis recommended that the Maine Administrative Procedure Act be amended to allow limited comment by members of the public at the time of rule adoption. The statute was modified by PL 1999, c. 784 “An Act to Implement the Recommendations of the Task Force to Study the Operation of and Support for the Board of Environmental Protection” to incorporate this recommendation.

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Criteria. Rulemaking must be conducted in accordance with the procedures and timelines established in the Maine Administrative Procedure Act (5 M.R.S. §§ 8001 to 8074), Board statute (38 M.R.S. § 341-D(1-B)), and the requirements and limitations set forth in the relevant enabling statute.

Assessment. The Board provides a neutral forum in which the regulated community and general public may evaluate and comment on draft proposed rules or amendments to existing rules. The Board strongly encourages the Department's existing use of stakeholder meetings with the regulated community and interested public prior to the drafting of a new rule, or major amendments to an existing rule, to obtain factual information and explore different approaches to regulation. The Board has found that such up-front involvement of stakeholders and interested persons frequently results in a better crafted rule and a more productive public hearing that is focused on the remaining issues in dispute. The Board believes that it plays an important role in resolving the remaining contentious issues in a public forum. In addition to reviewing the technical aspects of a rule, the Board, as a diverse group of citizens with differing areas of expertise, is able to provide an overall review of the rule including the level of regulation and the practicality of its implementation.

Over the past ten years, the Board has conducted an average of 13 rulemaking proceedings a year.

Rulemaking is consistently conducted in accordance with the procedures and timelines specified in the Maine Administrative Procedure Act, with all rules being approved by the Office of the Secretary of State. The effectiveness of the Department's rules is monitored by Department staff as they implement Department programs. In the case of a new rule, the Board may request that the Department report back on educational outreach and other Department steps taken to assist the public in complying with new requirements. The Board also monitors the effectiveness of rules through its review of administrative consent agreements and its application of the rules to the licensing applications, petitions and appeals it considers, and may recommend to the Commissioner changes needed to clarify or improve a rule.

**MAINE BOARD OF ENVIRONMENTAL PROTECTION**  
**GOVERNMENT EVALUATION ACT SELF-ASSESSMENT 2009**

**B. Decisions on Selected License Applications. The Board issues licensing decisions on applications that involve important policy questions or are otherwise determined to be of substantial public interest.**

**Goal:** Conduct proceedings in accordance with the procedural and substantive requirements of the Maine Administrative Procedure Act for adjudicatory proceedings as appropriate and the applicable Department statutes and rules, providing for the due process rights of all parties and for meaningful public participation in review of major applications.

**Background.** State law provides that certain types of applications must be decided by the Board. Title 38, section 341-D(2) provides that the Board shall decide each application for approval of permits and licenses<sup>6</sup> that in its judgment:

- Involves a policy, rule or law that the Board has not previously interpreted;
- Involves important policy questions that the Board has not resolved;
- Involves important policy questions or interpretations of a rule or law that require reexamination; or
- Have generated substantial public interest.

However, the Board may not assume jurisdiction over an application for an expedited wind energy development. An application of substantial public interest is further defined in rule as a project which has “the potential to affect a broad geographic area or a natural resource of statewide significance, or has generated more than local interest” (06-096 CMR 2(17)).

In addition, state law specifically provides that certain applications such as an application for a commercial hazardous waste facility (38 M.R.S. § 1319-R) must be decided by the Board after opportunity for a public hearing. Further, certain types of amendments to existing licenses, such as a request for an alternate mercury air emission limit (38 M.R.S. § 585-B(5)), must be decided by the Board. While decided by the Board, proceedings involving amendments to existing licenses generally would not involve a public hearing.

Requests for Board jurisdiction over a licensing matter are evaluated initially by the Commissioner in accordance with Department rules (06-096 CMR 2(17)). The Board Chair and Executive Analyst receive copies of all requests, and Board members are notified of all such requests at a Board meeting. Requests which appear to meet the criteria for Board jurisdiction are considered by the Board at a Board meeting with opportunity for comment by the applicant and persons requesting Board jurisdiction. The Board carefully evaluates requests for Board jurisdiction against the standards set forth above. In instances where the Board votes not to assume jurisdiction, the Board may request that Department staff provide periodic

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<sup>6</sup> The Maine APA defines license as “the whole or any part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law which represents an exercise of the state’s regulatory or police powers (5 M.R.S. § 8002(5)). The Department’s rules more specifically define license as “any license, license amendment, license renewal, transfer, variance, approval or certification issued by the Department (06-096 CMR 2(1)(I)).

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briefings on the project and any significant issues which arise during processing of the application. In addition to responding to requests for Board jurisdiction, the Board may assume jurisdiction on its own initiative if the statutory requirements for Board jurisdiction are met.

The vast majority of applications filed with the Department are processed by the staff and approved by the Commissioner or his designee.

Priorities. Applications over which the Board assumes jurisdiction are high priority projects; however, they are limited in number and processing proceeds in tandem with routine Board work.

Criteria. The Board must evaluate each application according to the relevant statute and rules, e.g., Solid Waste Management, Site Location of Development, Waste Water Discharge, etc. In most instances, the Board holds an adjudicatory hearing on major applications over which it assumes jurisdiction. In these cases, the requirements of the Maine Administrative Procedure Act (5 M.R.S. §§ 9051 to 9064) and the Department's hearing rules also apply to the conduct of the proceeding.

Assessment. Board jurisdiction over a major license application, which often includes an adjudicatory hearing, provides an opportunity for review of an application in a public forum where witnesses for the applicant, affected municipalities, supporters and opponents provide testimony under oath on the nature of the project, its potential impacts, and compliance with relevant statutes and rules. Witnesses are subject to questioning by the Board and cross-examination by the other parties.

Such public review of an application in which the evidence of all parties is tested in a public forum increases the public's understanding of the project. The Board has found that the public hearing process can be particularly useful when the project is complex (e.g., Waste Management Disposal Services solid waste landfill expansion in Norridgewock); the applicant is another state agency (e.g., Maine Department of Inland Fisheries and Wildlife public boat ramp at Merepoint in Brunswick); or the materials to be handled by the facility have hazardous properties that are of particular concern to the public (e.g. Portsmouth Naval Shipyard commercial hazardous waste storage facility, Maine Yankee's independent spent fuel storage system for radioactive wastes). In several instances, the public process has identified issues not previously addressed by the applicant, leading to project modifications and an improved project. The greater public involvement and more transparent process where all parties are heard and questioned in a public forum may also lead to greater public acceptance of the ultimate decision.

Board jurisdiction over a license application has been useful in moving some applications beyond historical impasses as was the case with the Dragon Products facility in Thomaston, where the Board held an adjudicatory hearing and resolved a 15 year old permitting case involving closure and reclamation of two large waste piles, one containing cement kiln dust, the other waste clinker from the cement manufacturing process.

## MAINE BOARD OF ENVIRONMENTAL PROTECTION

### GOVERNMENT EVALUATION ACT SELF-ASSESSMENT 2009

The Board realizes that an adjudicatory hearing held in compliance with the Maine Administrative Procedure Act can be time-consuming. The Board, therefore, makes every effort to work with the parties in advance of the hearing through mechanisms such as pre-hearing conferences to address procedural issues and focus the substantive issues to be addressed at the hearing so that the hearing is conducted in a fair and efficient manner that protects the due process rights of all parties.

The Board has had initial licensing jurisdiction over 16 major applications involving adjudicatory hearings in the past ten years. The Board has also had jurisdiction over 20 other licensing matters involving amendments or renewals of specific licenses (e.g., hazardous waste facility renewal license) which did not involve a public hearing.

The Board's decision on a licensing matter may be appealed to Superior Court. The Board has had two decisions involving coastal docks<sup>7</sup> vacated by the Maine Supreme Judicial Court (Law Court) and remanded back to the Board for further proceedings. In both instances the Board conducted a fresh analysis as directed by the Court, but came to the same conclusion; and the decisions were ultimately upheld by the Law Court. The Board is not aware of any instance in recent years where the Board's ultimate decision has been reversed by the courts on appeal.

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<sup>7</sup> In one of these cases, the Board made the initial licensing decision; the other came to the Board in the form of an appeal of the Commissioner's licensing decision.

**MAINE BOARD OF ENVIRONMENTAL PROTECTION**  
**GOVERNMENT EVALUATION ACT SELF-ASSESSMENT 2009**

**C. Appeals of Commissioner Licensing Decisions. The Board reviews and issues decisions on appeals of Commissioner licensing decisions.**

**Goal:** Process appeals expeditiously in accordance with the Department's procedural rules, the requirements of the Maine Administrative Procedure Act, and program specific statutes and rules.

**Background.** Licensing decisions of the Commissioner may be appealed to the Board or to Superior Court.

Under provisions of 38 M.R.S. § 341-D(4), the Board may affirm, amend, or reverse the Commissioner's decision, or remand<sup>8</sup> the matter to the Commissioner for further proceedings. The Board's review on appeal is *de novo* in that the Board is not bound by the Commissioner's findings of facts or conclusions of law. The record for appeals heard by the Board is usually limited to the administrative record prepared by the Department in its review of the application.<sup>9</sup>

**Priority.** Statute and rule specify the deadline for the filing of an appeal of a Commissioner's licensing decision; untimely appeals are summarily dismissed. Timely appeals are processed as they are filed, unless the parties request that the Board delay processing of the appeal while the parties attempt to resolve the matter through mediation or another form of alternative dispute resolution. Under Department rules, the Board may, at the request of the parties, delay processing of an appeal for up to 6 months while the parties attempt to reach resolution (06-096 CMR 2(24)(B)(2)).

**Criteria.** Appeals are processed in accordance with the procedural requirements set forth in the Department's rules, 06-096 CMR 2(24) and the statutes and rules governing the specific type of application. The rules establish timelines for the filing of an appeal and various steps within the appeal process such as the opportunity for parties to comment on requests to supplement the record, and the opportunity for the licensee to respond to the issues raised in the appeal. In rare instances where an adjudicatory hearing is held on an appeal, the proceeding is also subject to the requirements of the Maine Administrative Procedure Act, 5 M.R.S. §§ 9054 to 9061.

**Assessment.** Most persons aggrieved by a licensing decision of the Commissioner elect to appeal to the Board as opposed to Superior Court since it is less costly and more accessible, especially for persons not represented by legal counsel. While the Board's decision may in turn be appealed to Superior Court, many appeals are resolved at the Board level and those which are not have a more fully developed record for judicial review.

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<sup>8</sup> The statute was amended by P.L. 2009, c.121 "An Act to Amend Certain Laws Administered by the Department of Environmental Protection", Sec. 1 at the request of the Board to clarify that the Board may remand a matter to the Commissioner for further proceedings.

<sup>9</sup> In accordance with 38 M.R.S. § 341-D(4) the Board may allow the record to be supplemented on appeal. Procedures for supplementing the record are established in rule (06-096 CMR 2 (24)(B)).

**MAINE BOARD OF ENVIRONMENTAL PROTECTION**  
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On average the Board considers ten appeals of the Commissioner's licensing decisions each year. Appeals vary in complexity from matters involving natural resources impacts on residential properties to a major expansion of a solid waste landfill or a waste discharge license for a large industrial facility. There are often several appeals pending with the Board at any given time. The time needed to process a specific appeal is a function of a number of factors including the complexity of the matter, the number of parties involved, whether proposed supplemental evidence is filed, and Board and Department staff workload. Complex appeals that involve numerous parties and multiple appeals of several major licenses, as was the case with the Androscoggin River appeals,<sup>10</sup> may require an adjudicatory hearing in accordance with the Maine APA.

The Board is not aware of any instance in recent years where the Board's decision has been reversed by the courts on appeal. One case (in which the Board upheld the Commissioner's licensing decision) was appealed by the licensee and was eventually considered by the U. S. Supreme Court.<sup>11</sup> In *S.D. Warren Co. v Board of Environmental Protection et al.*, the United States Supreme Court unanimously affirmed the judgment of the Supreme Judicial Court of Maine which upheld the decision of the Board requiring water quality certifications under Section 401 of the Clean Water Act for five dams on the Presumpscot River. *S.D. Warren* challenged the authority of the State to require federally licensed hydropower projects to comply with State water quality standards through the issuance of a water quality certification. The U.S. Supreme Court ruled that the operation of a dam involves potential "discharges" and, therefore, triggers the need for State issued water quality certification in connection with a federal license application. The Board's decision (and the Commissioner's underlying decision) was upheld by unanimous decision of the U.S. Supreme Court.

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<sup>10</sup> The Androscoggin River Appeal proceeding was a consolidated proceeding involving multiple appeals of the waste discharge licenses for Verso Paper in Jay and Rumford Paper Company, and the water quality certification for FPL Energy Maine's Gulf Island Pond-Deer Rips Hydro Project.

<sup>11</sup> *S.D. Warren Co. v. Maine Board of Environmental Protection et al.*, (547 U.S. 370 (2006)).



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**D. Petitions to Modify, Revoke or Suspend a License.** The Board reviews and issues decisions on petitions to modify, revoke or suspend an existing license.

**Goal:** Process petitions to modify, revoke or suspend a license in accordance the requirements of statute as expeditiously as possible while providing for the due process rights of the parties.

**Background.** The petition process is a mechanism to re-open a final license that was issued by the Department if certain conditions are found to exist. Title 38, section 341-D(3) provides that the Board may modify in whole or in part any license, or may issue an order prescribing necessary corrective action, or may act in accordance with the Maine Administrative Procedure Act to revoke or suspend a license whenever the Board finds that:

- The licensee has violated any condition of the license;
- The licensee has obtained a license by misrepresenting or failing to disclose fully all relevant facts;
- The licensed discharge or activity poses a threat to human health or the environment;
- The license fails to include any standard or limitation legally required on the date of issuance;
- There has been a change in any condition or circumstance that requires revocation, suspension, or a temporary or permanent modification of the terms of the license;
- The licensee has violated any law administered by the Department; or
- The license fails to include any standard or limitation required pursuant to the federal Clean Air Act Amendments of 1990.

**Priority.** A petition to modify, revoke or suspend an existing license is of high priority since the petition process is intended to address serious problems with an existing license and the petition challenges a final license that the license holder is currently depending upon for the conduct of its affairs. The Department's rules (06-096 CMR 2(27)) require that the Board consider all such petitions within 30 days of filing and either deny the petition or schedule a public hearing.

**Criteria.** The criteria for consideration of a petition are set forth in statute. In addition to the substantive criteria listed above, if an adjudicatory hearing is held, the hearing must comply with the Maine Administrative Procedure Act (5 M.R.S. §§ 9054 to 9061).

**Assessment.** In recent years, the public has increasingly turned to the petition process to challenge final existing licenses, some of which have been in place for many years. The Board has considered 13 petitions to modify, revoke or suspend a license in the past ten years, 12 of those within the past 5 years. In one instance, the Board held a public hearing on the petition to gather evidence.<sup>12</sup> Following review of the evidence, the Board voted to dismiss the petition. All other petitions were dismissed prior to hearing following oral argument at a Board meeting.

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<sup>12</sup> Kennebec River Petitions: The Board considered two petitions to modify the water quality certifications for four hydropower projects (Weston, Shawmut, Hydro-Kennebec, Shawmut) to require immediate upstream and

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Recent experience has shown that the 30 day timeframe specified in Department rules is not sufficient to consider a petition and determine either to dismiss the petition or schedule an adjudicatory hearing. With the exception of relatively simple cases, more time is required depending upon the complexity of the petition and the need to ensure due process for the licensee. The Board believes that the petition process serves an important function, but the Department's rules need to be clarified and expanded to ensure that the process serves its intended purpose and does not become a substitute for a timely appeal of a licensing decision. In a report to the Joint Standing Committee on Natural Resources on the petition process,<sup>13</sup> the Board identified several issues in addition to timelines that the Board believes should be addressed through rulemaking. The Board will work with Department staff to amend the rules. To date, the Board's decisions on the petitions it has processed have not been reversed on appeal.

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downstream passage for American eel and certain species of migratory fish. The Board held a consolidated public hearing on the petitions in March 2007.

<sup>13</sup> Board of Environmental Protection Report to the Joint Standing Committees on Marine and Natural Resources in Response to Resolve 2007 Chapter 109 (LD 1528) "Resolve, To Require State Agencies with Jurisdiction over Dams to Update Plans for the Diadromous Fish", January 2008.

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**E. Enforcement.** The Board reviews all proposed administrative consent agreements, hears and decides appeals of Orders, and provides comment to the Commissioner on enforcement policies.

**Goal:** Provide Board input on Department enforcement policies, public review of administrative consent agreements, and timely resolution of appeals of emergency orders in accordance with applicable statutes.

**Background.** Under provisions of 38 M.R.S § 341-D(6), the Board shall:

- Advise the Commissioner on enforcement priorities and activities;
- Advise the Commissioner on the adequacy of penalties and enforcement activities;
- Approve administrative consent agreements pursuant to section 347-A, subsection 1; and
- Hear appeals of emergency orders pursuant to section 347-A, subsection 3.

The decision on whether or not to take enforcement action in a given situation is the prerogative of the Commissioner; however, the Board must approve all administrative consent agreements. Administrative consent agreements are negotiated by staff and reviewed by the Office of the Attorney General. They are included on the Board's meeting agenda (which is publicly noticed) and are reviewed by the Board at a regular Board meeting, where the Commissioner and Department staff may address any concerns Board members may have regarding a proposed agreement. At the discretion of the Chair, persons providing previous written comment on a proposed consent agreement may address the Board at the meeting when the agreement is proposed for Board approval. Administrative consent agreements must be approved by the Board to become effective. If the Board believes that the penalty or corrective action required to address the violation is either too harsh or too lenient, it may decline to approve a proposed consent agreement. This has the effect of sending the case back to Department staff for further negotiations.

**Priority.** Enforcement priorities are established by the Commissioner in accordance with the Department's enforcement policies (developed in consultation with the Board) which take into account a variety of factors such as the severity of the violation. The Department attempts to resolve the majority of violations through the consent agreement process, and there is no time limit on negotiations. Final approval of an agreement may be delayed to ensure that required site actions are taken (which may be weather or season dependent). As soon as Department staff and the violator reach agreement and the Office of the Attorney General gives its approval, the agreement proceeds rapidly to Board review at the next Board meeting (usually within 2 weeks), except that administrative consent agreements that address wastewater discharge violations are noticed for a 30 day public comment period (38 M.R.S. §347-A(6)).

**Criteria.** Administrative Consent Agreements are processed in accordance with the Department's enforcement policies and public notice requirements established in law (38 M.R.S. § 347-A).

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Assessment. Review of consent agreements at Board meetings serves as a mechanism for the Board to gauge compliance with existing rules, to provide a public forum for comment on proposed agreements, and to advise the Commissioner on matters such as enforcement priorities and appropriate penalties. Additionally, review of administrative consent agreements by the Board helps the Board identify compliance trends and assess whether rules are clear and adequate to achieve their intended purpose. Over the past ten years, the Department has resolved an average of 95 enforcement cases annually through the administrative consent agreement process. Compliance with the terms of a consent agreement is monitored by the appropriate program staff.

There have been no appeals of emergency orders in recent years.

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**F. Report to the Legislature.** The Board submits reports to the Legislature periodically, summarizing Board activities, identifying issues associated with the application of statutes and rules, and making recommendations for changes to statute.

**Goal:** Provide timely information to the Natural Resources Committee on the implementation and effectiveness of Department statutes and rules, identifying trends and requesting guidance and/or providing recommendations to the Committee on specific environmental matters.

**Background.** Title 38, section 341-D(7) requires the Board to report to the Joint Standing Committee on Natural Resources by January 15 of the first regular session of each Legislature on the “effectiveness of the environmental laws of the State and any recommendations for amending those laws or the laws governing the board.” Additionally, the Legislature may periodically require the Board to report on specific issues.

While the majority of the Department’s work is carried out by the Commissioner and his staff, the matters that come to the Board are often, by definition, controversial. These matters provide a sample of the major issues before the Department and provide a basis for the Board to assess the effectiveness of the Department’s statutes and rules.

**Assessment.** The Board has submitted an annual, rather than biennial, report since 2001 to keep the Natural Resources Committee advised of matters before the Board. Each of these reports contains a summary of the Board’s activities for the calendar year and recommendations for changes to statute or rule. In addition to these annual reports, the Board has submitted the following additional reports on specific issues:

- Recommendations for Reclassification of Waters of the State, December 6, 2002.
- Response to “Resolve, To Review the Responsibilities of the Board of Environmental Protection” (LD1149); included in the Board’s January 13, 2006 Report to the Joint Standing Committee on Natural Resources.
- Letter to Senator Martin, Rep. Duchesne, Members of the Joint Standing Committee on Natural Resources regarding the Blue Ribbon Commission on Solid Waste Management, August 7, 2006.
- Report to the Joint Standing Committees on Marine Resources and Natural Resources in Response to Resolve 2007, chapter 109 (LD 1528) “Resolve, To Require State Agencies with Jurisdiction Over Dams to Review and Update Plans for the Passage of Native Diadromous Fish” regarding petitions to modify, suspend or revoke a license. January 2008.
- Letter to Senator Martin, Rep. Koffman, Members of the Natural Resources Committee regarding Chapter 150 Control of Emissions from Outdoor Wood Boilers, January 17, 2008.
- Recommendations to the Legislature for Changes in Water Quality Classification, submitted to the Joint Standing Committee on Natural Resources, February 17, 2009.

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<b>G. <u>Other Matters</u></b>
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In addition to the major categories of activities discussed above, statute requires that the Board perform certain other functions including:

- Make recommendations to the Legislature on changes to the classification of Maine waters including any use attainability analysis for a waterbody failing to meet its water quality classification (38 M.R.S. § 464);
- Hear and decide appeals of Commissioner decisions on certain non-licensing actions such as the designation of an uncontrolled hazardous substance site (38 M.R.S. § 1365);
- Approve changes to municipal shoreland zoning ordinances (38 M.R.S. § 438-A); and
- Approve the Department's priority list for the small community grant program for water pollution abatement projects (38 M.R.S. § 411).

Priority. These matters are addressed as they are brought forward by the Commissioner and Department staff.

Criteria. Each is subject to the applicable program statute and rules and any relevant provisions of the Maine Administrative Procedure Act.

Assessment. These matters have the potential to be of significant public interest and the Board believes that they are appropriate issues for Board consideration.

Figure 2: Board of Environmental Protection: Activity by Year 2000 - 2009

Year	Rules	Appeals of Commissioner Licensing Decisions	Applications Initial BEP Licensing Jurisdiction / Adjudicatory Hearing	Applications BEP Licensing Jurisdiction w/out Hearing	Petitions to Modify, Revoke or Suspend a License	Enforcement Administrative Consent Agreements	Other	Other w/ Hearing
2000	17	13	4	0	1	103	6	1
2001	13	12	3	2	0	103	5	0
2002	10	8	2	3	0	105	2	1
2003	9	13	2	2	0	98	3	0
2004	15	9	0	3	0	91	1	1
2005	14	9	1	2	5	114	2	0
2006	8	6	2	3	1	96	2	0
2007	15	*6	2	3	1	92	1	0
2008	16	10	0	0	5	104	2	1
2009	14	11	0	2	0	48	1	1
Yr to date 11/1/09								

\* Includes Androscoggin River Appeals, see Note # 3.

Notes: Figure 2 Board of Environmental Protection Activity by Year

- 1) All matters before the Board are considered at a regular meeting of the Board. Board meetings are open to the public, but only the parties to a specific proceeding (applicant, appellant, responsible party, etc.) and staff participate except by leave of the Board Chair. The term "hearing" refers to a public hearing before the Board that complies with the Maine Administrative Procedures Act, Chapter 375. At a public hearing, the general public, in addition to the parties, is able to provide testimony.
- 2) Rules. Rules are allocated to the year in which they were posted for comment or public hearing, eg rule posted in December 2000 is counted in 2000 tally, although hearing and decision occurred in 2001. [There is considerable overlap from year to year so that in any given year the Board may consider as many as 20 rules – which are at various points in the rulemaking process from posting to final adoption.] Complexity of rules varies from minor revisions to new, major substantive rules.
- 3) Appeals of Licensing Decisions. Appeals are allocated to the year in which they were filed. Appeals withdrawn prior to Board meeting due to negotiated settlements are not included in the tally. In 2007 the Board received multiple appeals of the waste discharge licenses issued to Verso Paper (Jay) and Rumford Paper Company, and the water quality certification for Gulf Island Pond / Deer Rips Project, collectively referred to as the Androscoggin River Appeals. Since the licenses and certification were interrelated, the Board held a consolidated proceeding on the appeals. These appeals are tallied as 1 proceeding. An adjudicatory hearing in accordance with the Maine APA was held on the matter.
- 4) Applications / Board Jurisdiction with Adjudicatory Hearing. These matters are allocated to the year in which the Board held the public hearing. There is frequently overlap from year to year so that in any given year, the Board may be working on more projects than indicated above.
- 5) Applications / Board Jurisdiction without Adjudicatory Hearing. This category includes matters such as renewal or transfer of a hazardous waste facility license. The Board posts these licensing matters for public comment, but would rarely hold a public hearing.
- 6) Petitions to Modify, Revoke or Suspend a License. Petitions are allocated to the year in which the petition was filed.
- 7) Other. Miscellaneous category that includes some major proceedings that require adjudicatory hearings such as water quality classification proceedings and appeals of certain non-licensing Commissioner orders (e.g. designation of uncontrolled hazardous substance site). The category also includes other less complex proceedings not otherwise listed that require Board approval, e.g. small community grants program priority list, Clean Air Act State Implementation Plan (SIP) amendments, land acquisitions associated with installation of public water supplies at oil contaminated sites, etc.
- 8) Matters not shown. Requests for Board jurisdiction not granted, appeal of procedural rulings, informational sessions, site visits, etc.



**Figure 3: Public Hearings Held by the Board  
(on matters other than rules)**

2000	<ul style="list-style-type: none"> <li>• China Lake: water level and minimum flow.</li> <li>• Maine Yankee: independent spent fuel storage installation.</li> <li>• Private recreational dock, Bar Harbor.</li> <li>• Portsmouth Naval Shipyard Commercial hazardous waste storage facility.</li> <li>• Tire Collections, Inc., Lewiston.</li> </ul>
2001	<ul style="list-style-type: none"> <li>• Bangor Hydro: 345 kV electrical transmission line from Orrington to Baileyville. The application was withdrawn following the public hearing and revised.</li> <li>• Knox County: airport expansion.</li> <li>• Pine Tree Waste, Westbrook: solid waste transfer facility.</li> </ul>
2002	<ul style="list-style-type: none"> <li>• Waste Management Disposal Services, Norridgewock: solid waste landfill expansion.</li> <li>• Widewaters Stillwater Company, Bangor: retail development.</li> <li>• Water Quality Reclassification / Certain Waterbodies.</li> </ul>
2003	<ul style="list-style-type: none"> <li>• China Lake: water level and minimum flow determination.</li> <li>• Finfish Aquaculture General Permit.</li> </ul>
2004	<ul style="list-style-type: none"> <li>• Use Attainability Analysis for Ragged and Seboomook Lakes.</li> </ul>
2005	<ul style="list-style-type: none"> <li>• Me Dept Inland Fisheries &amp; Wildlife: public boat ramp at Merepoint, Brunswick.</li> </ul>
2006	<ul style="list-style-type: none"> <li>• Dragon Products, Thomaston: Application for closure and reclamation of cement kiln dust and waste clinker solid waste piles.</li> <li>• Private recreational dock, Bar Harbor.</li> </ul>
2007	<ul style="list-style-type: none"> <li>• Downeast LNG, Inc. and Downeast Pipeline LLC, Robbinston: Application to construct liquefied natural gas (LNG) import terminal and send-out pipeline. The application was withdrawn following the public hearing.</li> <li>• Kennebec River: Petitions to modify, revoke or suspend licenses of 4 hydropower projects to provide for passage of diadromous fish. The Board held consolidated public hearing on the petitions.</li> <li>• Androscoggin River Appeals: Verso (formerly International Paper), Jay; Rumford Paper Company Rumford; and FPL Energy Maine Hydro Gulf Island Pond / Deer Rips Hydro Project. Multiple appeals of waste discharge licenses and the water quality certification for Gulf Island Pond. The Board held a consolidated public hearing.</li> </ul>
2008	<ul style="list-style-type: none"> <li>• Water Quality Reclassification / Certain Waterbodies.</li> </ul>
2009	<ul style="list-style-type: none"> <li>• HoltraChem Chlor-Alkali Manufacturing Facility, Orrington. Appeal of Designation of Uncontrolled Hazardous Substance Site and Order. Ongoing.</li> </ul>

# MAINE BOARD OF ENVIRONMENTAL PROTECTION

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### III. Compliance with Federal and State Health and Safety Laws

The work of Board members and staff is largely confined to office and meeting room settings. Offices and meeting rooms comply with building codes and the requirements of the Americans with Disabilities Act.

### IV. Financial Summary

The Board of Environmental Protection Fund was established by the Legislature (38 M.R.S. § 341-G) as a non-lapsing fund to be used by the Board to carry out its duties. The fund does not have an independent source of revenue; rather money is transferred to the fund annually from the Maine Coastal and Inland Surface Oil Clean-up Fund, the Ground Water Oil Clean-up Fund, the Maine Hazardous Waste Fund, and the Maine Environmental Protection Fund. Transfers to the BEP Fund are in proportion to each contributing fund's percentage of the total special revenues received by the Department. The amount of money allocated to the Board of Environmental Protection Fund each fiscal year is limited by statute to \$325,000.<sup>14</sup>

The Board of Environmental Protection Fund provides "personal services" to fund the per diem for Board members, the position of Board Executive Analyst, and one Office Specialist II who serves as the clerk to the Board. The BEP Fund also includes "all other" funds for the cost of Board meetings and public hearings such as room and equipment rental; travel and meal expenses; staff phone, computer and other technology costs; office supplies; mailings; training; and professional fees for court reporters and any consultants hired to assist the Board. There are no "capital" expenses.

The amount of money transferred to the BEP Fund annually and the amount expended can vary significantly from year to year depending upon the number and nature of the matters pending before the Board, which determines the number of meetings and public hearings required. Funds are transferred to the account at the beginning of the fiscal year based upon anticipated needs. Any funds remaining at the end of the fiscal year are carried forward, reducing the amount to be transferred into the BEP Fund at the beginning of the next fiscal year.

A summary of budget and expenses for the past ten years is presented in Figure 4.

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<sup>14</sup> Public Law 2003, c 245 increased the cap in the Board Fund from \$250,000 to \$325,000 effective September 13, 2003.

# MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

## Board of Environmental Protection (0025) Budget Program

Figure 4

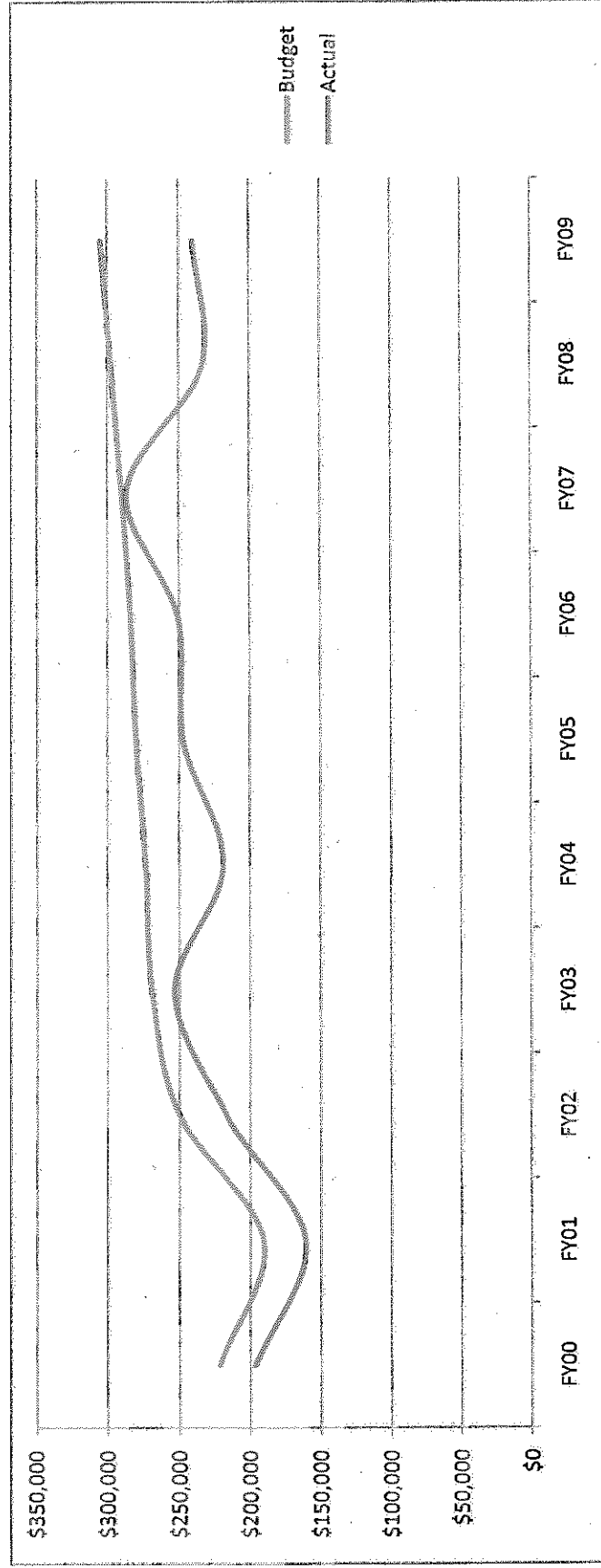
### 10-Year History

#### Budget History

	FY00	FY01	FY02	FY03	FY04	FY05	FY06	FY07	FY08	FY09
Personal Services	\$142,897	\$101,598	\$165,307	\$176,597	\$180,117	\$184,848	\$188,198	\$192,096	\$199,430	\$202,996
All Other	\$79,268	\$86,253	\$84,693	\$92,925	\$93,810	\$95,687	\$96,200	\$98,646	\$98,646	\$102,246
Capital	\$0	\$3,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>Totals:</b>	<b>\$222,165</b>	<b>\$190,851</b>	<b>\$250,000</b>	<b>\$269,522</b>	<b>\$273,927</b>	<b>\$280,535</b>	<b>\$284,398</b>	<b>\$290,742</b>	<b>\$298,076</b>	<b>\$305,242</b>

#### Expenditure History

Personal Services	\$142,810	\$100,544	\$163,170	\$171,980	\$172,370	\$179,132	\$186,145	\$192,095	\$195,807	\$200,400
All Other	\$53,175	\$60,110	\$53,054	\$81,055	\$46,554	\$67,889	\$64,787	\$94,411	\$37,678	\$39,710
Capital	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>Totals:</b>	<b>\$195,985</b>	<b>\$160,654</b>	<b>\$216,224</b>	<b>\$253,035</b>	<b>\$218,924</b>	<b>\$247,021</b>	<b>\$250,932</b>	<b>\$286,506</b>	<b>\$233,485</b>	<b>\$240,110</b>



This budget program exists only to allocate dedicated funds to support Board activities.

The only income in this budget program is Other Special Revenue.

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# MAINE BOARD OF ENVIRONMENTAL PROTECTION

## GOVERNMENT EVALUATION ACT SELF-ASSESSMENT 2009

### V. Regulatory Agenda

The regulatory agenda is developed and submitted by the Department of Environmental Protection, with input from the Board and its staff. See Appendix C for the current regulatory agenda.

### VI. Interagency Cooperation

The only entity with similar structure and functions is the Land Use Regulation Commission; however, the Commission's constituencies and program authorities differ significantly from those of the Board. Board staff and Commission staff consult occasionally regarding procedures such as the conduct of deliberative sessions, and the availability of facilities and equipment to address meeting needs.

Other sister agencies such as the Department of Health and Human Resources, Department of Inland Fisheries and Wildlife, and the Department of Marine Resources provide input to the Department and the Board on matters such as license applications and proposed rules which involve questions related to their areas of technical expertise.

Additionally, statute provides for joint agency rulemaking in some areas e.g., 06-096 CMR 200 Metallic Mineral Exploration, Advanced Exploration and Mining is a joint rule of the Land Use Regulation Commission and the Department of Environmental Protection; and 10-144 CMR 263 Comprehensive and Limited Environmental Laboratory Certification Rules is a joint rule of the Department of Health and Human Services and the Department of Environmental Protection.

### VII. Constituencies Served

The purpose of the Board is "to provide informed, independent and timely decisions on the interpretation, administration and enforcement of the laws relating to environmental protection and to provide for credible, fair and responsible public participation in department decisions." (38 M.R.S. § 341-B)

The Board's constituents are the people of Maine including: general public, individuals, businesses, municipalities, governmental entities, environmental and business organizations, other non-governmental entities, and any persons who are subject to the statutes and rules administered by the Department.

### VIII. Alternative Delivery Systems

The Legislature has periodically examined the role and responsibilities of the Board, most recently in 2005. LD 1149 "Resolve, To Review the Responsibilities of the Board of

## MAINE BOARD OF ENVIRONMENTAL PROTECTION GOVERNMENT EVALUATION ACT SELF-ASSESSMENT 2009

Environmental Protection” directed the Board to review its responsibilities and report back to the Joint Standing Committee on Natural Resources by January 2006. The Board’s response to LD 1149 was included in the Board’s Summary of Activities for Calendar Year 2005, submitted to the Committee on January 13, 2006.

In its report, the Board did not recommend changes to its core functions, but the Board did identify some ways to improve efficiency. In particular, the Board recommended a change to the Board’s statute regarding appeals of Commissioner licensing decisions (38 M.R.S. 341-D(4)) to clarify that the Board may remand a matter to the Commissioner for further proceedings. The Board has encountered several cases where the record was deficient and more information was needed to render a decision. In such instances, vacating the Commissioner’s licensing decision and remanding the matter to the Department for additional fact finding may be the most efficient, cost effective and fair way to address the matter. The Legislature subsequently amended the statute to make the Board’s authority to remand a matter to the Commissioner explicit.<sup>15</sup>

With respect to rulemaking, as discussed in Section IIIA above, the Board strongly encourages the Department’s use of stakeholder meetings with the regulated community and interested public prior to the drafting of a new rule, or major amendments to an existing rule, to obtain factual information and explore different approaches to regulation. Up-front involvement of stakeholders frequently results in a better crafted rule and a more productive public hearing that is focused on the remaining issues in dispute.

Additionally, the Board and Department have examined the Department’s general procedural rules. The Chapter 2 Rule Concerning the Processing of Applications and Other Administrative Matters was significantly revised in 2003. The revision incorporated provisions for alternative dispute resolution of appeals of Commissioner licensing decisions. Board staff is currently working with Department staff on a major revision of the Department’s Chapter 30 Rule: Special Rules for Hearings on Applications of Significant Public Interest. Chapter 30, in conjunction with the Maine Administrative Procedure Act, governs the conduct of adjudicatory hearings on licensing applications. Revisions to the rule should clarify procedures and facilitate the conduct of these proceedings.

The Board has also improved public access to information on Board proceedings. The Board moved to electronic posting of all Board meeting materials in 2005, conserving resources and providing more timely and cost effective distribution of information to the general public, the regulated community, and parties to the proceeding. The Board has also developed guidance documents to assist the public and regulated community regarding Board procedures. These documents, which are available on-line, are intended to make Board procedures more understandable to the general public and parties not represented by counsel, thereby contributing to more efficient proceedings.

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<sup>15</sup> P.L. 2009, c.121 “An Act to Amend Certain Laws Administered by the Department of Environmental Protection”, Sec. 1.

# MAINE BOARD OF ENVIRONMENTAL PROTECTION

## GOVERNMENT EVALUATION ACT SELF-ASSESSMENT 2009

### IX. Emerging Issues

#### A. Procedural Issues

Procedural issues before the Board include:

- Hearing Rules. The Department's rules governing public hearings on licensing applications are outdated and, in some instances, not consistent with requirements of the Maine Administrative Procedures Act. Revisions to the rule have been drafted and will come before the Board in early 2010.
- Appeal Process. There appears to be an increase in the number of requests to supplement the record on appeal by persons who did not participate in the initial licensing process, or who did not fully appreciate the importance of providing timely comments to Department staff during the application review period. While the statute and rules provide clear guidance for addressing requests to supplement the record, these requests have the effect of lengthening the appeal process since each such request requires a ruling by the Board Chair and the parties must be given an opportunity to comment on the admissibility of any proposed supplemental evidence prior to the Chair's ruling. The Board has posted guidance documents on its web page to better inform the public of the opportunity to comment on pending applications and the limitations on appeal.
- Petition Process. As discussed above, the Board has seen an increase in the number of petitions to modify, revoke or suspend a license. The Department's Chapter 2 "Rules Concerning the Processing of Applications and Other Administrative Matters" need to be revised to more fully define the process and timelines for processing petitions to modify, revoke or suspend a license.

#### B. Program Issues

With respect to specific program areas, the Board implements the policies and programs established by the Legislature. Therefore, the issues before the Board are anticipated to be those before the Legislature and the Department of Environmental Protection as a whole, including:

- Climate change. The state has adopted a Climate Change Action Plan which includes a number of recommendations for decreasing emissions of greenhouse gases. These actions cut across a number of areas including energy production, transportation, and land use patterns. Additionally, action in the United States Congress may impact the Regional Greenhouse Gas Initiative (RGGI).
- Energy. The Department anticipates a number of applications for energy projects, both generation (wind, tidal, pump storage, liquefied natural gas) and transmission, in response to the need for greater energy independence and to address climate change. Some of these applications are likely to come before the Board either for initial licensing or on appeal.

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- Invasive species. In the summer of 2009, Eurasian milfoil was identified in Salmon Lake in the Belgrade Lakes region, necessitating treatment of the affected cove with aquatic herbicides. This event highlighted the need for continued vigilance to protect the state's water and recreational resources.
- Solid waste management. Solid waste management has come to the fore in recent years as some of the state's commercial facilities reach capacity. The Board anticipates that the Legislature will continue to see bills to address solid waste issues.
- Toxics. In April 2008 the Legislature enacted Public Law 2007, chapter 643 "An Act to Protect Children's Health and the Environment from Toxic Chemicals in Toys and Children's Products." The Department has since identified chemicals of high concern and the Board will soon initiate rulemaking to identify priority pollutants.
- Water quality. Much of our wastewater treatment infrastructure is aging and needs to be upgraded. Other water quality issues include further elimination of overboard discharges, particularly those responsible for shellfish harvesting closures, and stormwater management.

### X. Comparison of Federal Laws and Regulations. N/A

### XI. Use of Personal Information. N/A

### XII. List of Information Required to be Filed with the Agency.

The general public is not required to file any reports, applications or similar paperwork with the Board.

The Department is required to notify the Board of applications filed. Orders issued by the Commissioner must be filed with the Board, thereby establishing the time period for an appeal of the Commissioner's licensing decision.

Persons appealing a Commissioner's decision to the Board are required to address a number of factors in their appeal documents (see 06-096 CMR Chapter 2(24) governing appeals of licensing decisions to the Board.) Applicants are required to meet the application requirements for the specific license sought; and licensees are required to comply with the terms and conditions of their licenses, which may include reporting requirements.





## Appendix A: Board of Environmental Protection Members



Susan M. Lessard, Chair  
Hampden, 1<sup>st</sup> Term

Ms. Lessard is the Town Manager of Hampden. She has more than 25 years of experience in local government in Maine and is well versed in a host of economic and community development issues, including extensive experience in solid waste management issues. She is a past president of the Maine Municipal Association, and is currently a member of the Bangor Region Chamber of Commerce and the Maine Town and City Manager's Assn. Her educational background is in public administration and engineering. She was appointed to the Board in July 2007; and appointed Chair in November 2008.



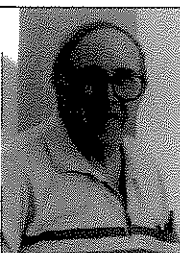
Elizabeth Ehrenfeld  
Falmouth, 2<sup>nd</sup> Term

Ms. Ehrenfeld holds a doctorate in Microbiology and Immunology from the University of Michigan. She has authored numerous scientific papers and has several patents on procedures for detection of bacteria in drinking water and food. Ms. Ehrenfeld is currently an adjunct professor at Southern Maine Community College where she teaches courses in microbiology, genetics and biotechnology. She currently serves on the board of the Biotech Association of Maine. Ms. Ehrenfeld is also a Registered Maine Guide. She was appointed to the Board in June 2005.



M. Wing Goodale  
Falmouth, 1<sup>st</sup> Term

Mr. Goodale is Deputy Director and Senior Scientist at the BioDiversity Research Institute, a Maine-based nonprofit ecological research group. He is involved in a number of research projects, including assessment of the impact of mercury and other toxins on bird populations. He also manages BioDiversity's web site and oversees the live eagle and loon web cameras. He has a bachelor's degree in biology from Colorado College and a master's degree in conservation biology from College of the Atlantic. He was appointed to the Board in March 2006.



Richard Gould  
Greenville, 1<sup>st</sup> Term

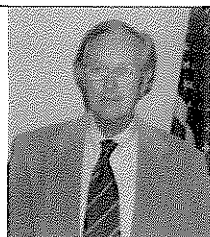
Mr. Gould is a retired high school teacher, and a former State Legislator. During his tenure in the Legislature, Mr. Gould served on the Joint Standing Committee on Energy and Natural Resources, including a term as co-chair of the Committee. Mr. Gould was also employed as legislative liaison for Great Northern Paper and as Code Enforcement Officer for the Town of Greenville. Mr. Gould remains active in educational issues and currently serves on the Greenville School Committee. He was appointed to the Board in March 2006.



Donald Guimond  
Fort Kent, 2<sup>nd</sup> Term

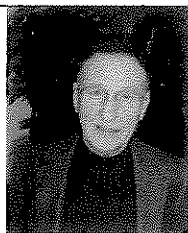
Mr. Guimond has served as the Town Manager of Fort Kent since 1993. He has also served as Director for the Greater Fort Kent Area Chamber of Commerce and Director of the Aroostook Municipal Association. He received a B.S. degree in Business Administration from Husson College and a Masters degree in Business Administration from Norwich University in Northfield, Vt. Mr. Guimond is also a partner and operator of a 1000 acre family farm, maintaining a cow/calf operation and harvesting grains, hay, straw and forest products. He was appointed to the Board in April 2004.

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P. Andrews Nixon  
Brunswick, 1<sup>st</sup> Term

Mr. Nixon recently retired from his position as Chair and Chief Executive Officer of the Dead River Company, where he was employed for 38 years. In addition to his service on the Board, Mr. Nixon was appointed by Governor Baldacci to serve as a trustee of the Energy and Carbon Savings Trust which was established to receive and expend revenue from the sale of carbon dioxide allowances as part of the State's participation in the Regional Greenhouse Gas Initiative (RGGI). Mr. Nixon was appointed to the Board in March 2008.



Matt Scott  
Belgrade, 2<sup>nd</sup> Term

Mr. Scott is an Aquatic Biologist and a Certified Fisheries Scientist. He is retired from 38 years of service in Maine State Government, including service as Deputy Commissioner of the Department of Inland Fisheries and Wildlife. Mr. Scott is a past president of the North American Lake Management Society, and a past president of the Sportsman's Alliance of Maine. He is a Master Maine Guide and a hobby beekeeper, managing several colonies of bees for pollination and honey production. Mr. Scott was appointed to the Board in June 2003, and served as Board Chair from June 2005 to December 2006.



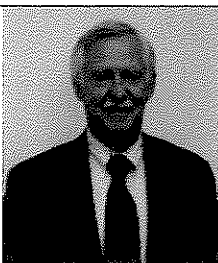
Lissa Widoff  
Freedom, 1<sup>st</sup> Term

Ms. Widoff is Executive Director of the nonprofit Robert & Patricia Switzer Foundation, located in Belfast, which focuses on environmental leadership development. Ms. Widoff has also worked for the Maine Community Foundation, State Planning Office, and The Nature Conservancy, Maine Chapter. She received a B.S. degree in Forest Biology from SUNY College of Environmental Science and Forestry in Syracuse, N.Y. and a Masters in Public Administration from Harvard University. She was appointed to the Board in March 2008.



Nancy Ziegler  
South Portland, 2<sup>nd</sup> Term

Ms. Ziegler is a graduate of the University of California at Berkeley and the University of Maine School of Law. She was admitted to the practice of law in Maine and Federal Court in 1981. Ms. Ziegler was an associate with the Portland law firm of Curtis, Thaxter, Stevens, Broder and Micoletau from 1984-1994, with a practice in civil litigation. Ms. Ziegler has served as a debate and mock trial coach for Cape Elizabeth High School for more than 15 years, and has authored the Maine State High School Mock Trial competition case sponsored by the Maine Bar Association. She was appointed to the Board in April 2002.



Frank Woodard  
Falmouth, 1<sup>st</sup> Term

Mr. Woodard is co-founder and past president (1979 to 2004) of Woodard & Curran, Inc., a 550 employee environmental consulting firm headquartered in Portland, Maine. Mr. Woodward holds B.S. and M.S. degrees in Sanitary and Environmental Engineering from the University of Maine and a Ph.D. in Environmental Engineering from Purdue University. In addition to his consulting work, Mr. Woodard has served 12 years as a full-time professor and many years as an adjunct professor of Environmental Engineering at the University of Maine, where the Environmental Engineering laboratory is named in his honor. He was appointed to the Board in June 2009.



## **Appendix B:**

### **Laws and Rules Administered**

Statutory Names, Popular and Short Title

Sections:

341 to 349-A .....	Organization and Powers
351 to 354.....	Maine Environmental Protection Fund
355 to 357.....	Lake Environmental Protection Fund
358.....	Maine Pollution Prevention Fund
361-A to 372 .....	Protection and Improvement of Waters Laws – General Provisions
401 to 404.....	Groundwater Protection Program
410-F to 410-G.....	Marine Environmental Monitoring Program
410-H to 410-K.....	Nonpoint Source Pollution Program
410-L to 410-N.....	Lakes Assessment and Protection Program
411 to 424.....	Water Pollution Control
435 to 449.....	Mandatory Shoreland Zoning
451 to 452.....	Water Pollution Enforcement
464 to 470.....	Water Classification Program
470-A to 470-H.....	Water Withdrawal Reporting Program
480-A to 480-BB .....	Natural Resources Protection Act
481 to 490.....	Site Location of Development
490-A to 490-N.....	Performance Standards for Borrow Pits
490-W to 490-FF.....	Performance Standards for Quarries
491 to 537.....	Interstate Water Pollution Control
541 to 560.....	Oil Discharge Prevention and Pollution Control
561 to 570-M.....	Underground Oil Storage Facilities and Ground Water Protection
571.....	Criminal Liability for Corrupting Waters
581 to 610-A .....	Protection and Improvement of Air
611 to 612.....	Mills and Dams Laws — General Provisions
630 to 637.....	Maine Waterway Development and Conservation Act
640.....	Mills and Dams — Public Participation in Licensing Hydroelectric
Dams	
651 to 659.....	Mills and Dams — Rights and Liabilities
701 to 728.....	Mills and Dams — Action for Damages
771 to 776.....	Mills and Dams — Protection of Ways From Overflow
815 to 933.....	Maine Dam Registration, Abandonment and Water Level Act
951 to 969.....	Saco River Corridor
971 to 979.....	Floating Timber
991 to 1002.....	St. Croix International Waterway Commission
1021 to 1027.....	Wharves and Fish Weir
1061 to 1210 .....	Maine Sanitary District Enabling Act
1231 to 1234.....	Community Sanitary Districts
1251 to 1255.....	Sewer District
1271 to 1284.....	Asbestos
1291 to 1297.....	Lead Abatement
1301 to 1319-Y .....	Maine Hazardous Waste, Septage and Solid Waste Management
Act	
1361 to 1371.....	Uncontrolled Hazardous Substance Sites

1401 to 1404.....	Hazardous Material Spill Clean-up Liability Laws
1601 to 1610.....	Sales of Consumer Products
1661 to 1671.....	Mercury Added Products and Services
1861 to 1865.....	Invasive Aquatic Plants Prevention
1871 to 1872.....	Invasive Aquatic Plants and Nuisance Species Control
2001 to 2013.....	Coastal and Lake Watershed Districts
2301 to 2313.....	Toxics Use and Hazardous Waste Reduction
3001 to 3013.....	Uniform Environmental Covenants Act

Rule Chapters:

<u>Chapter</u>	<u>Title</u>	<u>Filing Date</u>	<u>Pages</u>
2	Processing of Applications	April 1, 2003	1-26
20	Regulations for hearings on applications	March 3, 1981	1-7
30	Special regulations for hearings on applications for significant public interest	March 8, 1981	1-13
40	Regulations for the conduct of enforcement hearings	June 30, 1978	1-7
100	Definitions of regulations	September 29, 2009	1-35
101	Visible emissions regulations	May 13, 2003	1-6
102	Open-burning regulation	April 15, 2005	1-3
103	Fuel burning equipment particulate emission standard	October 29, 1990	1-4
104	Incinerator particulate emission std.	October 29, 1990	1-2
105	General process source particulate emission standard	October 29, 1990	1-2
106	Low sulfur fuel regulation	September 23, 1991	1-4
107	Sulfur dioxide emissions standards for sulfite pulp mills	October 10, 1979	1
109	Emergency episode regulation	September 16, 1991	1-8
110	Ambient air quality standards	August 1, 1996	1-5

111	Petroleum liquid vapor storage control	September 24, 1999	1-3
112	Bulk Terminal Petroleum Liquid Transfer Requirements	February 17, 1998	1-3
113	Growth offset regulation	April 13, 1999	1-10
114	Classification of air quality control regions	May 4, 1994	1-5
115	Emission license regulations Appendix A & B	July 30, 2008	1-43
116	Prohibited dispersion techniques	October 25, 1989	1-4
117	Source surveillance	May 4, 1994	1-12
118	Gasoline service stations vapor control	July 20, 1995	1-11
119	Motor vehicle fuel volatility limit	May 2, 2000	1-2
120	Gasoline tank truck tightness self certification	July 5, 1994	1-3
121	Emissions testing of resource recovery facilities	November 9, 1007	1-10
123	Paper coating regulation	October 3, 1989	1-6
124	Total reduced sulfur control from kraft mills	April 21, 2004	1-10
125	Perchloroethylene dry cleaner regulation Appendix	June 19, 2009	1-10 1-15
126	Capture efficiency test procedure	June 4, 1991	1-55
127	New motor vehicle emission standards	May 20, 2009	1-21
129	Surface coating facilities	February 26, 1998	1-46
130	Solvent degreasers	June 23, 2004	1-11
131	Cutback asphalt and emulsified asphalt	September 10, 2009	1-2
132	Graphic arts-rotogravure and flexography	February 5, 1993	1-42
133	Petroleum Liquids Transfer Vapor Recovery at Bulk Gasoline Plants	July 5, 1994	1-3

134	Reasonably Available Control Technology for Facilities that Emit Volatile Organic Compounds	February 8, 1995	1-8
135	Hexavalent chromium particulate emission standard	October 29, 1990	1
137	Emission Statements	November 3, 2008	1-19
138	Reasonably Available Control Technology for Facilities that Emit Nitrogen Oxides	July 29, 1994	1-10
139	Transportation Conformity	September 14, 2007	1-15
140	Part 70 Air Emission License Regulations Appendix A, B & C	December 19, 2005 April 7, 2000	1-75 1-47
141	Conformity of General Federal Actions	May 16, 2007	1
143	New Source Performance Standards	June 15, 2005	1-6
144	National Emission Standards for Hazardous Air Pollutant	June 15, 2005	1-7
145	NOx Control Program	July 17, 2001	1-6
146	Diesel-Powered Motor Vehicle Emission Std.	March 31, 2000	1-6
148	Emissions from Smaller-Scale Electric Generating Resources	August 4, 2004	1-7
149	General Permit Regulation for non-metallic Mineral Processing Plants	July 20, 2008	1-12
150	Control of Emissions from Outdoor Wood Boilers	April 7, 2009	1-8
151	Architectural and Industrial Maintenance (AIM) Coatings	October 27, 2005	1-18
152	Control of Emissions of Volatile Organic Compounds from Consumer Products Attachments	December 10, 2007	1-39 1-96
153	Mobile Equipment Repair and Refinishing	February 20, 2004	1-4
155	Portable Fuel Container Spillage Control	July 9, 2004	1-7



	Attachments		1-41
156	CO <sub>2</sub> Budget Trading Program	July 17, 2008	1-84
157	CO <sub>2</sub> Budget Trading Program Waiver Ans Suspension	May 15, 2008	1-4
158	CO <sub>2</sub> Budget Trading Program Auction Provisions	July 17, 2008	1-8
159	Control of Volatile Organic Compounds From Adhesives and Sealants	June 19, 2009	1-14
160	Outdoor Wood Boiler Replacement And Buy Back Program	February 20, 2009	1-4
200	Metallic mineral exploration, advanced exploration and mining	August 21, 1991	1-80
305	Natural resources protection act - permit by rule standards	February 20, 2008	1-60
310	Wetland protection rules	January 21, 2009	1-14
315	Assessing and Mitigating Impacts to Existing Scenic and Aesthetic Uses	June 24, 2003	1-09
335	Significant Wildlife Habitat	February 24, 2009	1-14
355	Coastal sand dune rules	May 9, 2006	1-17
371	Definitions of terms used in site location of development law and regulations	October 4, 1982	1-07
372	Policies and procedures under the site location law	October 26, 1979	1-04
373	Financial capacity standard of the site location law	October 26, 1979	1-05
374	Traffic movement standard of the site location law	June 25, 1997	1-16
375	No adverse environmental effect standard of the site location law	January 13, 2006	1-32
376	Soil types standard of the site location law	October 26, 1979	1-04
377	Review of roads under the site	September 9, 1980	1-08

location of development law

378	Performance standard review of borrow pits and topsoil mining operations	February 22, 2007	1-17
380	Planning Permit	June 25, 1997	1-06
400	Solid Waste Management Rules General Provisions Appendix A - D	February 13, 2009	1-82
401	Landfill Disposal Facilities Appendix A	September 1, 1999	1-84
402	Transfer Stations/Storage Facilities for Municipal Solid Waste	June 6, 2006	1-51
403	Incineration Facilities	September 22, 1998	1-12
405	Management, Testing & Disposal of Special Wastes Appendix A - E	June 6, 2006	1-48
409	Processing Facilities Appendix A	February 13, 2009	1-34
410	Composting Facilities	February 13, 2009	1-35
411	Non-hazardous transporter licenses	March 8, 1991	1-8
415	Reasonable Costs for Handling And Recycling of Electronic Wastes	September 17, 2007	1-11
418	Beneficial Use of Solid Wastes Appendix A - B	June 6, 2006	1-38
419	Agronomic Utilization of Residuals Appendix A -B	December 24, 1999	1-54
420	Septage Management Rules Appendix A - C	September 3, 1997	1-42
424	Lead Management Regulations Appendix A - C	December 6, 2004	1-66 1-41
425	Asbestos Management Regulations	May 24, 2004	1-69
450	Administrative regulations for hydropower projects	January 5, 1987	1-14

500	Stormwater Management	December 22, 2006	1-66
502	Direct Watersheds of Waterbodies Most At Risk From New Development....	December 22, 2006	1-06
514	Regulations concerning the use of aquatic pesticides	January 24, 1989	1
517	Certification of persons servicing and repairing sanitary waste treatment facilities	December 28, 1978	1
519	Interim Effluent Limitations and Controls for Discharge of Mercury	October 1, 2001	1-06
520	Definitions for the Waste Discharge Permitting Program	March 31, 1999	1-07
521	Applications for Waste Discharge Licenses Appendices	March 31, 1999	1-33 34-45
522	Application Processing Procedures for Waste Discharge Licenses	March 31, 1999	1-08
523	Waste Discharge License Conditions Appendix A	March 31, 1999	1-22 23
524	Criteria and Standards for Waste Discharge Licenses	March 31, 1999	1-16
525	Effluent Guidelines and Standards	March 31, 1999	1-28
528	Pretreatment Program Appendices	March 12, 2008	1-50 51-59
529	General Permits for Certain Wastewater Dischargers	June 22, 2007	1-06
530	Surface Waters Toxics Control Program	October 4, 2005	1-12
531	Regulations for wastewater operator's certification program	May 03, 2006	1-06
532	Large Commercial Passenger Vessels	May 20, 2005	1-5
543	Rules to control the subsurface discharges of pollutants by well injection	September 28, 2006	1-14
550	Discontinuance of wastewater treatment lagoons	December 28, 1978	1-02

555	Standards for the addition of septage and fluid hazardous waste to municipal wastewater treatment facilities	March 4, 2009	1-04
570	Combined sewer overflow abatement	January 31, 2000	1-09
573	Snow Dumps: Exemption from Waste Discharge License	September 1, 1988	1-02
574	Siting & Operation of Road Salt and Sand-Salt Storage Areas	November 28, 2001	1-07
579	Classification Attainment Evaluation Using Biological Criteria for Rivers And Streams Appendices	May 22, 2003	1-14 1-04
580	Regulations relating to sampling procedures and analytical procedures	February 18, 1989	1-03
581	Regulations relating to water quality evaluations	January 24, 1989	1-02
582	Regulations relating to temperature	February 13, 1989	1
584	Surface Water Quality Criteria for Toxic Pollutants	October 4, 2005	1-23
585	Identification of fish spawning areas and designation salmonid spawning areas	February 13, 1989	1-02
586	Rules pertaining to discharges to Class A waters	February 13, 1989	1-02
587	In-stream flow and water level standards	July 25, 2007	1-10
592	Small Community Wastewater Program	May 15, 2001	1-08
594	State contribution to overboard discharge replacement projects	November 23, 2004	1-06
595	State Revolving Loan Fund	April 30, 2007	1-31
596	Overboard discharges: licensing, and abandonment	November 22, 2004	1-08
600	Oil discharge prevention & pollution control rules for marine oil terminals, transportation	March 19, 2001	1-49

	pipelines and vessels		
650	Damage claims-oil conveyance fund	June 20, 1983	1-18
680	Tanker anchorage rules	December 19, 1979	1-5
685	Payment and Reimbursement of Oil Transfer Fees	November 23, 2005	1-3
691	Rules for Underground Oil Storage Facilities	March 29, 2007	1-127
695	Registration, installation, operation and closure of underground hazardous substance storage facilities	October 17, 1996	1-46
800	Identification of hazardous matter	January 29, 1981	1-21
801	Discharge of hazardous matter; removal and written reporting procedure	January 29, 1981	1-3
850	Identification of hazardous waste	July 15, 2004	1-96
851	Standards for generators of hazardous waste	January 18, 2001	1-11
852	Land Disposal Restrictions	March 11, 1994	1-17
853	Licensing for transporters of hazardous waste	October 29, 2002	1-11
854	Standards for hazardous waste facilities	March 11, 1994	1-56
855	Interim license for waste facilities for hazardous waste	March 11, 1994	1-14
856	Licensing for hazardous waste facilities	October 29, 2002	1-47
857	Hazardous waste manifest requirements	January 18, 2001	1-13
860	Waste Oil Management Rules	June 13, 1988	1-30
870	Labeling of Mercury Added Products	October 24, 2006	1-5
872	Exemptions from the Ban on Sale of Mercury Switches, Relays and Measuring Devices	August 22, 2007	1-8
900	Biomedical Waste Management	December 11, 1989	1-70
1000	State of Maine guidelines for municipal shoreland zoning ordinances	March 14, 2006	1-64
	Manure Utilization Guidelines		1-14



**Appendix C:**  
**Current Regulatory Agenda**  
**06 Department of Environmental Protection**  
2009-2010 Regulatory Agenda

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096: The Department

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**AGENCY UMBRELLA-UNIT NUMBER:** 06-096

**AGENCY NAME:** Department of Environmental Protection

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**CONTACT PERSON FOR FOLLOWING CHAPTERS:** Peter J. Carney, Office of the Commissioner, 17 State House Station, Augusta, ME 04333-0017. Tel: 207-287-4305

**CHAPTER 2: Rules Concerning the Processing of Applications**

**STATUTORY BASIS:** 38 MRSA §341-D

**PURPOSE:** Amend provision concerning revocation, modification or suspension of licenses to be consistent with the Maine Administrative Procedure Act; clarify provisions pertaining to appeals of licensing decisions; update provision to be consistent with recent statutory amendments; and possible amendments to reflect revisions to the Chapter 30 hearing rules.

**ANTICIPATED SCHEDULE:** As needed basis

**AFFECTED PARTIES:** Parties filing applications and members of the public participating in Department review of pending applications, and persons filing appeals or petitions for consideration by the Board.

**CONSENSUS-BASED RULE DEVELOPMENT:** Not applicable.

**CHAPTER 20: Rules Governing the Conduct of Rulemaking Hearings**

**STATUTORY BASIS:** 38 MRSA §341-D

**PURPOSE:** Repeal existing Chapter 20: Hearings on Applications and replace with new Chapter 20: Rules Governing the Conduct of Rulemaking Hearings.

**ANTICIPATED SCHEDULE:** As needed basis

**AFFECTED PARTIES:** Parties and members of the public appearing in Department hearings on rulemaking.

**CONSENSUS-BASED RULE DEVELOPMENT:** Not applicable.

**CHAPTER 30: Rules Governing the Conduct of Licensing Hearings**

**STATUTORY BASIS:** 38 MRSA §341-D

**PURPOSE:** Repeal existing Chapter 20: Hearings on Applications and existing Chapter 30: Special Regulations for Hearings on Applications of Significant Public Interest, and replace with new Chapter 30: Rules Governing the Conduct of Licensing Hearings.

**ANTICIPATED SCHEDULE:** As needed basis

**AFFECTED PARTIES:** Parties and members of the public appearing in Department hearings on licensing.

**CONSENSUS-BASED RULE DEVELOPMENT:** Not applicable.

**CHAPTER 40: Rules Governing the Conduct of Enforcement Hearings**

**STATUTORY BASIS:** 38 MRSA §341-D

**PURPOSE:** Repeal existing Chapter 40: Conduct of Enforcement Hearings and replace with new Chapter 40: Rules Governing the Conduct of Enforcement Hearings.

**ANTICIPATED SCHEDULE:** As needed basis

**AFFECTED PARTIES:** Parties and members of the public appearing in Department hearings on enforcement.

**CONSENSUS-BASED RULE DEVELOPMENT:** Not applicable.

**CONTACT PERSON FOR FOLLOWING CHAPTERS:** Deborah Avalone-King, Bureau of Air Quality, 17 State House Station, Augusta, ME 04333-0017. Tel: 207.287.7028

**CHAPTER 100:** Definitions Regulation

**STATUTORY BASIS:** 38 M.R.S.A. § 585-A

**PURPOSE:** This existing rule is proposed for amendment on an ongoing basis to reflect recent federal and state legislative and regulatory changes affecting definitions.

**ANTICIPATED SCHEDULE:** Ongoing

**AFFECTED PARTIES:** These administrative changes will not have a direct impact on the regulated community or the environment.

**CONSENSUS-BASED RULE DEVELOPMENT:** Not applicable.

**CONTACT PERSON FOR FOLLOWING CHAPTERS:** Jeffrey Crawford, Bureau of Air Quality, 17 State House Station, Augusta, ME 04333-0017. Tel: 207.287.7647

**CHAPTER 110:** Ambient Air Quality Standards

**STATUTORY BASIS:** 38 M.R.S.A. §§ 584

**PURPOSE:** The existing rule will be proposed for amendment to incorporate new federal ambient air quality standards for ozone and particulate matter.

**ANTICIPATED SCHEDULE:** June 2010

**AFFECTED PARTIES:** General public and regulated community.

**CONSENSUS-BASED RULE DEVELOPMENT:** Not applicable.

**CHAPTER 114:** Classification of Air Quality Control Regions

**STATUTORY BASIS:** 38 M.R.S.A. §§ 583-B, 585-A

**PURPOSE:** The existing rule will be proposed for amendment to update air quality control region classifications based on new federal ozone and particulate matter standards.

**ANTICIPATED SCHEDULE:** June 2010

**AFFECTED PARTIES:** General public and regulated community.

**CONSENSUS-BASED RULE DEVELOPMENT:** Not applicable.

**CONTACT PERSON FOR FOLLOWING CHAPTERS:** Deborah Avalone-King, Bureau of Air Quality, 17 State House Station, Augusta, ME 04333-0017. Tel: 207.287.7028

**CHAPTER 121:** Emission Limitations and Emission Testing of Resource Recovery Facilities

**STATUTORY BASIS:** 38 M.R.S.A. § 585, 585-B, 590

**PURPOSE:** This existing rule is proposed for amendment to incorporate new federal requirements for resource recovery facilities..

**ANTICIPATED SCHEDULE:** December 2009

**AFFECTED PARTIES:** Owners and operators of resource recovery facilities.

**CONSENSUS-BASED RULE DEVELOPMENT:** Not applicable.

**CONTACT PERSON FOR FOLLOWING CHAPTERS:** Lynne Cayting, Bureau of Air Quality, 17 State House Station, Augusta, ME 04333-0017. Tel: 207.287.7599

**CHAPTER 127:** New Motor Vehicle Emission Standards

**STATUTORY BASIS:** 38 M.R.S.A. §§ 585, 585-A, 585-D

**PURPOSE:** The existing rule will be proposed for amendment to incorporate changes to the greenhouse gas standards component of the program.

**ANTICIPATED SCHEDULE:** June 2010

**AFFECTED PARTIES:** Manufacturers of motor vehicles.

**CONSENSUS-BASED RULE DEVELOPMENT:** Not applicable.



**CONTACT PERSON FOR FOLLOWING CHAPTERS:** Jeffrey Crawford, Bureau of Air Quality, 17 State House Station, Augusta, ME 04333-0017. Tel: 207.287.7647

**CHAPTER 129: Surface Coating Regulations**

**STATUTORY BASIS:** 38 M.R.S.A. §§ 583-B, 585-A

**PURPOSE:** The existing rule will be proposed for amendment to incorporate federal control technique guidelines (CTG) requirements for metal furniture, miscellaneous metal and plastic parts, and flatwood paneling coatings.

**ANTICIPATED SCHEDULE:** June 2010

**AFFECTED PARTIES:** General public and regulated community.

**CONSENSUS-BASED RULE DEVELOPMENT:** Not applicable.

**CONTACT PERSON FOR FOLLOWING CHAPTERS:** Carolyn Wheeler, Bureau of Air Quality, 17 State House Station, Augusta, ME 04333-0017. Tel: 207.287.8159

**CHAPTER 117: Source Surveillance**

**STATUTORY BASIS:** 38 M.R.S.A. §§ 585-A, 590

**PURPOSE:** This existing rule will be proposed for amendment to improve consistency with federal regulations and across source categories.

**ANTICIPATED SCHEDULE:** June 2010

**AFFECTED PARTIES:** Licensed sources required to operate continuous emission monitoring systems (CEMS).

**CONSENSUS-BASED RULE DEVELOPMENT:** Not applicable.

**CHAPTER 118: Gasoline Dispensing Facilities Vapor Control**

**STATUTORY BASIS:** 38 M.R.S.A. §§ 585, 585-A

**PURPOSE:** This existing rule will be proposed for amendment to incorporate recent federal changes to Stage I vapor control requirements and to incorporate state changes to the Stage II program, including sunset provisions

**ANTICIPATED SCHEDULE:** February 2010

**AFFECTED PARTIES:** Owners and operators of gasoline dispensing facilities.

**CONSENSUS-BASED RULE DEVELOPMENT:** Not applicable.

**CHAPTER 123: Paper Coating Regulation**

**STATUTORY BASIS:** 38 M.R.S.A. §§ 343-A, 585-A

**PURPOSE:** This existing rule will be proposed for amendment to incorporate federal control technique guidelines (CTG) requirements for paper, film and foil coatings.

**ANTICIPATED SCHEDULE:** December 2009

**AFFECTED PARTIES:** Owners and operators of paper, film and coating operations.

**CONSENSUS-BASED RULE DEVELOPMENT:** Not applicable.

**CONTACT PERSON FOR FOLLOWING CHAPTERS:** Deborah Avalone-King, Bureau of Air Quality, 17 State House Station, Augusta, ME 04333-0017. Tel: 207.287.7028

**CHAPTER 143: Standards of Performance for New Sources of Emissions of Air Pollutants**

**STATUTORY AUTHORITY:** 38 M.R.S.A. §§ 585, 585-A

**PURPOSE:** This existing rule will be proposed for amendment to incorporate the latest federal new source performance standards (NSPS) for the control of air pollutant emissions.

**ANTICIPATED SCHEDULE:** March 2010

**AFFECTED PARTIES:** Owners and operators of stationary sources of air pollutants.

**CONSENSUS-BASED RULE DEVELOPMENT:** Not applicable.

**CHAPTER 144: Standards for Hazardous Air Pollutants for Stationary Sources**

**STATUTORY AUTHORITY:** 38 M.R.S.A. §§ 585, 585-A

**PURPOSE:** This existing rule will be proposed for amendment to incorporate the latest federal new source performance standards for hazardous air pollutants for stationary sources (NESHAPS).

**ANTICIPATED SCHEDULE:** March 2010

**AFFECTED PARTIES:** Owners and operators of stationary sources of air pollutants.

**CONSENSUS-BASED RULE DEVELOPMENT:** Not applicable.

**CONTACT PERSON FOR FOLLOWING CHAPTERS:** Lynne Cayting, Bureau of Air Quality, 17 State House Station, Augusta, ME 04333-0017. Tel: 207.287.7599

**CHAPTER 146:** Diesel-Powered Motor Vehicle Emission Standards

**STATUTORY BASIS:** 29-A M.R.S.A. § 2114, 38 M.R.S.A. § 585-A, 585-D

**PURPOSE:** The existing rule will be proposed for amendment to incorporate more stringent opacity limits.

**ANTICIPATED SCHEDULE:** June 2010

**AFFECTED PARTIES:** Owners and operators of heavy-duty diesel-powered motor vehicles.

**CONSENSUS-BASED RULE DEVELOPMENT:** Not applicable.

**CONTACT PERSON FOR FOLLOWING CHAPTERS:** Carolyn Wheeler, Bureau of Air Quality, 17 State House Station, Augusta, ME 04333-0017. Tel: 207.287.8159

**CHAPTER 150:** Control of Emissions From Outdoor Wood Boilers

**STATUTORY BASIS:** 38 M.R.S.A. §§ 585-A, 610-B

**PURPOSE:** This existing rule will be proposed for amendment to incorporate statutory changes that amend the definition of outdoor wood boiler and commercial outdoor wood boiler and change the qualifications for those preparing outdoor wood boiler recommendations.

**ANTICIPATED SCHEDULE:** December 2009

**AFFECTED PARTIES:** Manufacturers, retailers and owner/operators of outdoor wood boiler units.

**CONSENSUS-BASED RULE DEVELOPMENT:** Not applicable.

**CONTACT PERSON FOR FOLLOWING CHAPTERS:** Andrea Lani, Bureau of Air Quality, 17 State House Station, Augusta, ME 04333-0017. Tel: 207.287.5902

**CHAPTER 154:** Flexible Package Printing

**STATUTORY BASIS:** 38 M.R.S.A. §§ 585, 585-A

**PURPOSE:** This new rule will address federal control technique guideline (CTG) requirements for flexible package printing activities.

**ANTICIPATED SCHEDULE:** December 2009

**AFFECTED PARTIES:** Owners and operators of flexible package printing facilities.

**CONSENSUS-BASED RULE DEVELOPMENT:** Not applicable.

**CHAPTER 156:** CO2 Budget Trading Program

**STATUTORY BASIS:** 38 M.R.S.A. §§ 585-A, 580, 580-A, 580-B, 580-C

**PURPOSE:** This existing rule will be proposed for amendment to incorporate statutory changes from the last Legislative session.

**ANTICIPATED SCHEDULE:** March 2010

**AFFECTED PARTIES:** Owners and operators of CO2 Budget Sources.

**CONSENSUS-BASED RULE DEVELOPMENT:** Not applicable.

**CONTACT PERSON FOR FOLLOWING CHAPTERS:** Carolyn Wheeler, Bureau of Air Quality, 17 State House Station, Augusta, ME 04333-0017. Tel: 207.287.8159

**CHAPTER 160:** Outdoor Wood Boiler Replacement and Buy-Back Program

**STATUTORY BASIS:** 38 M.R.S.A. §§ 585-A, 610-B

**PURPOSE:** This existing rule will be proposed for amendment to incorporate statutory changes that remove the installation date requirement to be eligible for reimbursement from the fund.  
**ANTICIPATED SCHEDULE:** December 2009  
**AFFECTED PARTIES:** Manufacturers, retailers and owner/operators of outdoor wood boiler units  
**CONSENSUS-BASED RULE DEVELOPMENT:** Not applicable.

**CONTACT PERSON FOR FOLLOWING CHAPTERS:** Andrea Lani, Bureau of Air Quality, 17 State House Station, Augusta, ME 04333-0017. Tel: 207.287.5902

**CHAPTER 162:** Fiberglass Boat Building  
**STATUTORY BASIS:** 38 M.R.S.A. §§ 585, 585-A  
**PURPOSE:** This new rule will address federal control technique guideline (CTG) requirements for fiberglass boat building activities.  
**ANTICIPATED SCHEDULE:** March 2010  
**AFFECTED PARTIES:** Manufacturers of fiberglass boats and boat components.  
**CONSENSUS-BASED RULE DEVELOPMENT:** Not applicable.

**CONTACT PERSON FOR FOLLOWING CHAPTERS:** Mike Mullen, Bureau of Land and Water Quality, 17 State House Station, Augusta, ME 04333-0017. Tel: 207-287-4728

**CHAPTER 305:** Permit By Rule Standards  
**STATUTORY BASIS:** 38 MRSA §341-D  
**PURPOSE:** This existing rule will be proposed for amendment to address any updates as needed.  
**ANTICIPATED SCHEDULE:** As needed basis  
**AFFECTED PARTIES:** Regulated community  
**CONSENSUS-BASED RULE DEVELOPMENT:** Not applicable

**CONTACT PERSON FOR FOLLOWING CHAPTERS:** James Cassida, Bureau of Land and Water Quality, 17 State House Station, Augusta, ME 04333-0017. Tel: 207-592-1864

**CHAPTER 310:** Wetlands and Waterbodies Protection Rules  
**STATUTORY BASIS:** 38 MRSA §341-D and PL 2003, c. 592  
**PURPOSE:** These existing rules are proposed for amendment in order to make adjustments and clarifications, and update as needed.  
**ANTICIPATED SCHEDULE:** Summer/Fall 2010  
**AFFECTED PARTIES:** Regulated community.  
**CONSENSUS-BASED RULE DEVELOPMENT:** Not applicable

**CHAPTERS 335:** Significant Wildlife Habitat  
**STATUTORY BASIS:** 38 MRSA §§ 341-D, 480-A *et seq.*  
**PURPOSE:** These existing rules are proposed for amendment in order to make adjustments and clarifications, and update as needed.  
**ANTICIPATED SCHEDULE:** Fall 2010  
**AFFECTED PARTIES:** Regulated community.  
**CONSENSUS BASED RULE DEVELOPMENT:** Not applicable.

**CHAPTER 340:** Community Public Water Supply Primary Protection Areas  
**STATUTORY BASIS:** 38 MRSA §341-D and PL 2007, ch. 353  
**PURPOSE:** Adopt rules concerning community public water supply primary protection areas, as required by recent legislation.  
**ANTICIPATED SCHEDULE:** Not yet scheduled  
**AFFECTED PARTIES:** Regulated community.  
**CONSENSUS BASED RULE DEVELOPMENT:** Not applicable.

**CONTACT PERSON FOR FOLLOWING CHAPTER:** Hetty Richardson, Bureau of Land and Water Quality, 17 State House Station, Augusta, ME 04333-0017. Tel: 207-287-7799

**CHAPTER 342:** Significant Groundwater wells (or alternative chapter # and title on this subject)  
**STATUTORY BASIS:** 38 MRSA §341-D and PL 2007, ch. 399 and PL 2009, ch 295

**PURPOSE:** To specify fees associated with significant groundwater wells, as provided for in recent legislation.

**ANTICIPATED SCHEDULE:** Winter 2009-2010

**AFFECTED PARTIES:** Regulated community

**CONSENSUS BASED RULE DEVELOPMENT:** Not applicable.

**CONTACT PERSON FOR FOLLOWING CHAPTER:** James Cassida, Bureau of Land and Water Quality, 17 State House Station, Augusta, ME 04333-0017. Tel: 207-592-1864

**CHAPTERS 371 *et seq.*:** Site Location of Development Rules (several chapters)

**STATUTORY BASIS:** 38 MRSA §§ 341-D and 481 *et seq.*

**PURPOSE:** Some or all of several chapters of existing rules adopted pursuant to the Site Law may be proposed for amendment in order to update provisions and standards as needed.

**ANTICIPATED SCHEDULE:** Winter 2009-2010

**AFFECTED PARTIES:** Regulated community.

**CONSENSUS-BASED RULE DEVELOPMENT:** Not applicable.

**CONTACT PERSON FOR THE FOLLOWING CHAPTERS:** Paula Clark, DEP-BRWM, 17 SHS, Augusta ME 04333-0017. Tel: 207.287.7718

**CHAPTER 400:** General Provisions

**STATUTORY BASIS:** 38 MRSA § 1304(1); Resolves 2007, c. 170

**PURPOSE:** The rule will be amended to include a general standard related to odor management at solid waste facilities, and to revise the schedule for submission of solid waste facility annual reports.

**ANTICIPATED SCHEDULE:** Fall 2009

**AFFECTED PARTIES:** Solid waste facility operators

**CONSENSUS-BASED RULE DEVELOPMENT:** Not contemplated

**CHAPTER 401:** Landfill Siting, Design and Operation

**STATUTORY BASIS:** 38 MRSA § 1304(1); Resolves 2007, c. 170

**PURPOSE:** Revisions to provisions on landfill gas and odor management

**ANTICIPATED SCHEDULE:** Fall 2009

**AFFECTED PARTIES:** Solid waste facility operators

**CONSENSUS-BASED RULE DEVELOPMENT:** Not contemplated

**CHAPTER 402:** Transfer Stations and Storage Sites for Solid Waste

**STATUTORY AUTHORITY:** 38 MRSA § 1304(1)

**PURPOSE:** The rule will be amended to provide for collection of household hazardous waste.

**ANTICIPATED SCHEDULE:** Fall 2009

**AFFECTED PARTIES:** Operators of solid waste transfer stations and storage facilities.

**CONSENSUS-BASED RULE DEVELOPMENT:** Not contemplated

**CHAPTER 409:** Solid Waste Processing Facilities

**STATUTORY BASIS:** 38 MRSA § 1304(1); 38 MRSA §1310-N(5-A), PL 2009, c. 412, §A-2(2).

**PURPOSE:** The rule will be amended to: 1) revise requirements for crushing, shredding or other processing of automobiles, white goods and scrap metal; and 2) to set recycling requirements for facilities that process solid waste.

**ANTICIPATED SCHEDULE:** Fall 2009

**AFFECTED PARTIES:** Solid waste handlers and facility operators

**CONSENSUS-BASED RULE DEVELOPMENT:** Not contemplated

**CHAPTER 411: Non-Hazardous Waste Transporter Licenses**

**STATUTORY BASIS:** 38 MRSA § 1304(1-A) and (1-B)

**PURPOSE:** The chapter will be revised to update and clarify the rules related to the transportation of non-hazardous waste.

**ANTICIPATED SCHEDULE:** Spring 2010

**AFFECTED PARTIES:** Businesses and individuals who transport solid waste

**CONSENSUS-BASED RULE DEVELOPMENT:** Not contemplated

**CONTACT PERSON FOR THE FOLLOWING CHAPTER:** Carole Cifrino, DEP-BRWM, 17 SHS, Augusta ME 04333-0017. Tel: 207.287.7720

**CHAPTER 415: Reasonable Costs for the Handling and Recycling of Electronic Wastes**

**STATUTORY BASIS:** 38 MRSA § 1610

**PURPOSE:** The rule will be amended to be consistent with recent statutory changes, including adding desktop printers and digital picture frames to the covered electronic devices and implementing a market-share basis for allocating costs to some manufacturers.

**ANTICIPATED SCHEDULE:** Fall 2009

**AFFECTED PARTIES:** Manufacturers of televisions, computer monitors, desktop printers, and digital picture frames; Universal Waste consolidators working within Maine's household e-waste program

**CONSENSUS-BASED RULE DEVELOPMENT:** Not applicable.

**CONTACT PERSON FOR THE FOLLOWING CHAPTER:** Paula Clark, DEP-BRWM, 17 SHS, Augusta ME 04333-0017. Tel: 207.287.7718

**CHAPTER 418: Beneficial Use of Solid Wastes**

**STATUTORY BASIS:** 38 MRSA § 1304(1), (1-B) and (13)

**PURPOSE:** To rule will be amended to clarify and revise certain provisions related to fuel substitution activities

**ANTICIPATED SCHEDULE:** Spring 2010

**AFFECTED PARTIES:** Persons who process solid waste for use as fuel and persons who use fuel made from solid waste

**CONSENSUS-BASED RULE DEVELOPMENT:** Not contemplated

**CONTACT PERSON FOR THE FOLLOWING CHAPTER:** Carole Cifrino, DEP-BRWM, 17 SHS, Augusta ME 04333-0017. Tel: 207.287.7720

**CHAPTER 425: Asbestos Management Regulations**

**STATUTORY BASIS:** 38 MRSA § 12771 et seq.

**PURPOSE:** The rule will be amended to integrate recent statutory changes and to update certain work practice standards to current standards of professional practice

**ANTICIPATED SCHEDULE:** Fall 2009/Winter 2010

**AFFECTED PARTIES:** Asbestos abatement professionals

**CONSENSUS-BASED RULE DEVELOPMENT:** Not applicable.

**CONTACT PERSON FOR FOLLOWING CHAPTERS:** Don Witherill, Bureau of Land and Water Quality, 17 State House Station, Augusta, ME 04333-0017. Tel: 207-287-7725

**CHAPTER 500: Stormwater Management**

**CHAPTER 502: Direct Watersheds of Waterbodies Most at Risk from New Development**

**CHAPTER 523: Proposed Requirements for Individual Stormwater Discharge Permits**

**STATUTORY BASIS:** 38 MRSA §§ 341-D, 420-D

**PURPOSE:** This existing rules will be proposed for amendment to address issues identified during program implementation.

**ANTICIPATED SCHEDULE:** Fall/Winter 2009-2010

AFFECTED PARTIES: Land developers and businesses.  
CONSENSUS-BASED RULE DEVELOPMENT: Not applicable.

**CONTACT PERSON FOR FOLLOWING CHAPTERS:** Brian Kavanah, Bureau of Land and Water Quality, 17 State House Station, Augusta, ME 04333-0017. Tel: 207-287-7700

**CHAPTER 519:** Interim Effluent Limitations and Controls for the Discharge of Mercury  
STATUTORY BASIS: 38 MRSA §§ 341-D, 413, 420  
PURPOSE: This existing rule may be proposed for amendment to implement statutory changes enacted in 2001 and/or to modify the process for establishing mercury limits and monitoring frequencies.  
ANTICIPATED SCHEDULE: Fall 2010  
AFFECTED PARTIES: Dischargers of mercury to surface waters of the state.  
CONSENSUS-BASED RULE DEVELOPMENT: Not applicable.

**CHAPTERS 520-529:** MEPDES Wastewater Discharge Program  
STATUTORY BASIS: 38 MRSA §341-D  
PURPOSE: This existing rule will be proposed for amendment to respond to U.S. EPA comments and/or changes in related Federal regulations.  
ANTICIPATED SCHEDULE: Not yet scheduled  
PARTIES AFFECTED: Persons having or applying for waste discharge licenses.  
CONSENSUS-BASED RULE DEVELOPMENT: Not applicable.

**CONTACT PERSON FOR FOLLOWING CHAPTER:** Tom Danielson, Bureau of Land and Water Quality, 17 State House Station, Augusta, ME 04333-0017. Tel: 207- 287-7728

**CHAPTER 583:** Nutrient Criteria for Fresh Surface Waters  
STATUTORY BASIS: 38 MRSA §341-D  
PURPOSE: Adopt nutrient criteria for fresh surface waters  
ANTICIPATED SCHEDULE: Winter 2009-2010  
AFFECTED PARTIES: Persons having or applying for waste discharge licenses  
CONSENSUS-BASED RULE DEVELOPMENT: Not applicable

**CONTACT PERSON FOR FOLLOWING CHAPTER:** Barry Mower, Bureau of Land and Water Quality, 17 State House Station, Augusta, ME 04333-0017. Tel: 207-287-7777.

**CHAPTER 584:** Water Quality Criteria for Toxics  
STATUTORY BASIS: 38 MRSA §§ 341-D, 464, 465, 480-C  
PURPOSE: Adopt a BAF (bioaccumulation factor).  
ANTICIPATED SCHEDULE: Not yet scheduled  
AFFECTED PARTIES: Industry, POTWs, fish consumers  
CONSENSUS-BASED RULE DEVELOPMENT: Not applicable

**CONTACT PERSON FOR FOLLOWING CHAPTERS:** Rich Baker, Bureau of Land and Water Quality, 17 State House Station, Augusta, ME 04333-0017. Tel: 207-287-7730.

**CHAPTER [yet to be assigned]:** State-imposed Shoreland Zoning Ordinance for Specified Towns (and Amendments to those Ordinances)  
STATUTORY BASIS: 38 MRSA §438-A  
PURPOSE: This existing rule will be proposed for amendment to provide or modify shoreland zoning ordinances for those municipalities that fail to adopt suitable ordinances as required by 38 MRSA §438-A(2).  
ANTICIPATED SCHEDULE: As needed basis  
AFFECTED PARTIES: Shoreland property owners and municipal officials.  
CONSENSUS-BASED RULE DEVELOPMENT: Not applicable.

**CHAPTER [yet to be assigned]:** Repeal of State-imposed Shoreland Zoning Ordinance for Specified Towns

**STATUTORY BASIS:** 38 MRSA §438-A(4)

**PURPOSE:** This existing rule will be proposed for amendment to repeal state-imposed shoreland zoning ordinances that are no longer necessary.

**ANTICIPATED SCHEDULE:** As needed basis

**AFFECTED PARTIES:** Shoreland property owners, municipal officials.

**CONSENSUS-BASED RULE DEVELOPMENT:** Not applicable.

**CONTACT PERSON FOR THE FOLLOWING CHAPTER:** George Seel, DEP-BRWM, 17 SHS, Augusta ME 04333-0017. Tel: 207.287.7166

**CONTACT PERSON FOR THE FOLLOWING CHAPTERS:** George Seel, DEP-BRWM, 17 SHS, Augusta ME 04333-0017. Tel: 207.287.7166

**CHAPTER 691:** Underground Oil Storage Facilities

**STATUTORY BASIS:** 38 MRSA § 561 et seq.

**PURPOSE:** The rule will be amended to: incorporate statutory changes regarding the circumstances under which mothballed tanks may be returned to service; remove siting requirements for re-codification in proposed new chapter 692; update site assessment, cleanup and environmental sampling provisions; and to make other minor revisions and non-substantive corrections as appropriate.

**ANTICIPATED SCHEDULE:** Fall 2009

**AFFECTED PARTIES:** Owners and operators of oil storage facilities

**CONSENSUS-BASED RULE DEVELOPMENT:** Not contemplated.

**CHAPTER 692:** Siting of Oil Storage Facilities

**STATUTORY BASIS:** 38 MRSA § 341-D(1-B); PL 2001, c. 302, § 3; PL 2007, c. 569, § 7.

**PURPOSE:** This new rule chapter will combine the existing requirements for siting of underground oil storage facilities with new, largely identical, requirements for siting of aboveground oil storage facilities.

**ANTICIPATED SCHEDULE:** Fall 2009

**AFFECTED PARTIES:** Owners and operators of oil storage facilities

**CONSENSUS-BASED RULE DEVELOPMENT:** Not contemplated.

**CONTACT PERSON FOR THE FOLLOWING CHAPTER:** Jeff Madore, DEP-BRWM, 17 SHS, Augusta ME 04333-0017. Tel: 207.287.7848

**CHAPTER 693:** Operator Training for Oil Storage Facilities

**STATUTORY BASIS:** 38 MRSA § 564(2)(L)

**PURPOSE:** This new chapter will establish training requirements for operators of underground oil storage facilities used in the marketing and distribution of oil.

**ANTICIPATED SCHEDULE:** Spring 2010

**AFFECTED PARTIES:** Owners and operators of oil storage facilities

**CONSENSUS-BASED RULE DEVELOPMENT:** Not contemplated.

**CONTACT PERSON FOR THE FOLLOWING CHAPTER:** George Seel, DEP-BRWM, 17 SHS, Augusta ME 04333-0017. Tel: 207.287.7166

**CHAPTER 700:** Wellhead Protection

**STATUTORY BASIS:** 38 MRSA § 563-C; PL 2001, c. 302, § 3; PL 2007, c. 569, § 7.

**PURPOSE:** This new chapter will establish the rules for compliance with the wellhead protection provisions of 38 MRSA §§1391-1399.

**ANTICIPATED SCHEDULE:** Fall 2009

**AFFECTED PARTIES:** Persons who propose to develop any of the following types of facilities within 1000 feet of a public drinking water well or within 300 feet of a private well: an oil storage

facility; an automobile graveyard; an automobile recycling business; an auto body shop; an automobile maintenance and repair facility; a drying cleaning facility; a metal plating or finishing facility; or a commercial hazardous waste facility.

**CONSENSUS-BASED RULE DEVELOPMENT:** Not contemplated.

**CONTACT PERSON FOR THE FOLLOWING CHAPTERS:** Jeff Madore, DEP-BRWM, 17 SHS, Augusta ME 04333-0017. Tel: 207.287.7848

**CHAPTER 800:** Identification of Hazardous Matter

**STATUTORY AUTHORITY:** 38 MRSA § 1319(1)

**PURPOSE:** This rule will be amended to update the list of substances constituting hazardous matter, incorporate statutory changes since original adoption of the rule in 1981, and clarify the circumstances under which hazardous matter spills must be reported to the department.

**ANTICIPATED SCHEDULE:** Spring 2010

**AFFECTED PARTIES:** Persons having care, custody, possession or control of hazardous matter

**CONSENSUS-BASED RULE DEVELOPMENT:** Not contemplated

**CHAPTER 801:** Discharge of Hazardous Matter: Removal and Written Reporting Procedures

**STATUTORY BASIS:** 38 MRSA § 1319(2)

**PURPOSE:** This rule will be repealed and replaced in conjunction with revisions to chapter 800.

**ANTICIPATED SCHEDULE:** Spring 2010

**AFFECTED PARTIES:** Persons having care, custody, possession or control of hazardous matter

**CONSENSUS-BASED RULE DEVELOPMENT:** Not contemplated

**CONTACT PERSON FOR THE FOLLOWING CHAPTERS:** Stacy Ladner, DEP-BRWM, 17 SHS, Augusta ME 04333-0017. Tel: 207.287.7853

**CHAPTERS 850-857:** Hazardous Waste Management Rules

**STATUTORY BASIS:** 38 MRSA § 1319-O(1)

**PURPOSE:** These rule chapters will be amended to, among other things, incorporate changes in corresponding federal requirements, add requirements for handling waste gas, and update the abbreviated license provisions. Under the latter provisions, license review is streamlined for hazardous waste generators who agree to abide by specified operating standards. The standards vary by facility type.

**ANTICIPATED SCHEDULE:** Spring 2010

**AFFECTED PARTIES:** Hazardous waste generators

**CONSENSUS-BASED RULE DEVELOPMENT:** Not applicable

**CHAPTER 860:** Waste Oil Management Rules

**STATUTORY BASIS:** 38 MRSA §§ 341-D(1-B) and 1319-O(2)

**PURPOSE:** This rule will be amended to adjust the fee on transport of oily water.

**ANTICIPATED SCHEDULE:** Spring 2010

**AFFECTED PARTIES:** Waste oil generators

**CONSENSUS-BASED RULE DEVELOPMENT:** Not applicable

**CONTACT PERSON FOR THE FOLLOWING CHAPTER:** Jeff Madore, DEP-BRWM, 17 SHS, Augusta ME 04333-0017. Tel: 207.287.7848

**CHAPTER 873:** Mercury content standards for lamps

**STATUTORY BASIS:** 38 MRSA § 1672(2)

**PURPOSE:** This rule will establish limits on the amount of mercury in lamps sold in Maine after January 1, 2012.

**ANTICIPATED SCHEDULE:** Summer 2010

**AFFECTED PARTIES:** Manufacturers, retailers and wholesalers of mercury-added lamps

**CONSENSUS-BASED RULE DEVELOPMENT:** Not contemplated



**CONTACT PERSON FOR THE FOLLOWING CHAPTERS:** John James, DEP-BRWM, 17 SHS, Augusta ME 04333-0017. Tel: 207.287.7866

**CHAPTER 880: Designation and Regulation of Priority Chemicals**

**STATUTORY BASIS:** 38 MRSA § 341-D(1-B); 38 MRSA §1694(2)

**PURPOSE:** This new rule will set forth the procedure by which the Commissioner will designate and scrutinize priority chemicals as authorized under 38 MRSA §1691 et seq.

**ANTICIPATED SCHEDULE:** Fall 2009

**AFFECTED PARTIES:** Manufacturers of products that contain a priority chemical if use or disposal of the product is likely to expose a child or fetus to the chemical

**CONSENSUS-BASED RULE DEVELOPMENT:** Not contemplated

**CHAPTER 881: Fees; Chemical Use in Children's Products**

**STATUTORY BASIS:** 38 MRSA § 341-D(1-B); 38 MRSA §1695(4)

**PURPOSE:** This new rule will set forth implement the department's authority to assess fees on manufacturers of products that contain a priority chemical. The fees will be use to cover costs incurred by the department to collect data on the use of priority chemicals in children's products and to assess the availability of safer alternatives.

**ANTICIPATED SCHEDULE:** Spring 2010

**AFFECTED PARTIES:** Manufacturers of products that contain a priority chemical if use or disposal of the product is likely to expose a child or fetus to the chemical

**CONSENSUS-BASED RULE DEVELOPMENT:** Not contemplated

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STATE OF MAINE  
ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE  
COMMITTEE ON NATURAL RESOURCES

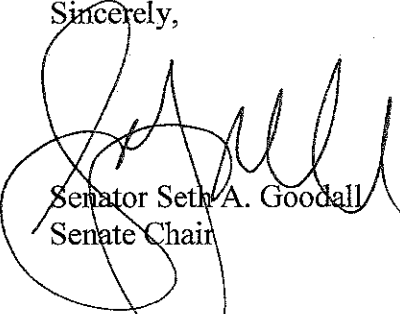
February 25, 2010


The Honorable Elizabeth H. Mitchell  
President of the Senate  
The Honorable Hannah M. Pingree  
Speaker of the House of Representatives  
124th Legislature  
State House  
Augusta, ME 04333

Dear Madam President and Madam Speaker:

Pursuant to Title 3 Maine Revised Statutes, chapter 35, we are pleased to submit the findings of the Joint Standing Committee on Natural Resources from the review and evaluation of the Board of Environmental Protection under the State Government Evaluation Act. In its review, the Committee found that the Board of Environmental Protection is operating within its statutory authority.

Sincerely,

  
Senator Seth A. Goodall  
Senate Chair

  
Representative Robert S. Duchesne  
House Chair

c: ✓ Susan Lessard, Chair, Board of Environmental Protection  
Patrick Norton, Director, Office of Policy and Legal Analysis